

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

In the matter of an Application in the nature of a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A (Writ) Application No. 90/2009**

1. Vehicles Lanka (Pvt) Limited,  
43, Katana Road,  
Thimbirigaskatuwa,  
Negombo.
  
2. Handun Harsha Prabath De Silva,  
Chairman/ Managing Director,  
Vehicles Lanka (Pvt.) Limited,  
43, Katana Road,  
Thimbirigaskatuwa, Negombo.

**PETITIONERS**

Vs.

1. Minuwangoda Pradeshiya Sabha,  
Paththaduwana, Minuwangoda.
  
2. Pathmakumara Arangala,  
Chairman,  
Minuwangoda Pradeshiya Sabha  
Paththaduwana,  
Minuwangoda.

2A. Secretary  
Minuwangoda Pradeshiya Sabha  
Paththaduwana, Minuwangoda.

3. Chief Valuer,  
Valuation Department,  
Regional Office Colombo North,  
No. 19A, Vijaya Road, Gampaha.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Ms. Faisza Markar for the Petitioner

Riad Ameen for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Ms. Anusha Fernando, Deputy Solicitor General for the  
3<sup>rd</sup> Respondent

**Written Submissions of the**

**Petitioner tendered on:**

15<sup>th</sup> August 2018

**Written Submissions of the 1<sup>st</sup> and 2<sup>nd</sup>**

**Respondents tendered on:**

25<sup>th</sup> October 2018

**Decided on:**

07<sup>th</sup> November 2018

**Arjuna Obeyesekere, J**

When this matter was taken up for argument on 26<sup>th</sup> June 2018, the learned Counsel appearing for all Parties moved that this Court pronounce judgment on the written submissions that would be tendered by the parties. While written submissions have been tendered on behalf of the Petitioners and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Attorney-at-Law for the 3<sup>rd</sup> Respondent has informed this Court by a motion dated 31<sup>st</sup> August 2018 that written submissions would not be tendered on behalf of the 3<sup>rd</sup> Respondent as no relief has been prayed against the 3<sup>rd</sup> Respondent.

The Petitioners have filed this application seeking a Writ of Certiorari to quash the Notices of Assessments issued to the 1<sup>st</sup> Petitioner by the 1<sup>st</sup> Respondent Minuwangoda Pradeshiya Sabha. The said notices have been annexed to the petition marked 'P4' and 'P8'.

The facts of this application very briefly are as follows.

The 1<sup>st</sup> Petitioner is a company incorporated under the Companies Act No. 7 of 2007. The 2<sup>nd</sup> Petitioner states that he is the Chairman and Managing Director of the 1<sup>st</sup> Petitioner. The Petitioners' claim that the Board of Investment of Sri Lanka has granted approval to the 1<sup>st</sup> Petitioner to engage in a project to assemble motor vehicles and that the total value of the project is Rs. 500 million. The Petitioners claim further that the 1<sup>st</sup> Petitioner has secured from the Ministry of Enterprise Development, Industrial Policy and Investment Promotion, a land in extent of approximately 2 acres, on a 50 year lease. This Court observes that the Petitioners have not submitted any documents to

establish that the 1<sup>st</sup> Petitioner had received approval from the Board of Investment nor has a copy of the lease agreement been submitted with the petition.

The Petitioners state that the said land is situated within the Japalawatte Industrial Estate, Minuwangoda, within the administrative limits of the 1<sup>st</sup> Respondent. The Petitioners state further that the 1<sup>st</sup> Respondent had issued the 1<sup>st</sup> Petitioner a Notice of Assessment<sup>1</sup> dated 1<sup>st</sup> October 2008 in terms of Section 141(3) of the Pradeshiya Sabha Act No. 15 of 1987 in respect of the aforementioned land. A copy of the said Notice of Assessment has been annexed to the petition, marked 'P4'. The 1<sup>st</sup> Petitioner had been informed by 'P4' that the annual value of the said land had been assessed at Rs. 17,850,000<sup>2</sup> and that the rates payable per quarter is Rs. 35,700, which is 8% of the annual value. The 1<sup>st</sup> Petitioner, by a letter dated 21<sup>st</sup> October 2008, annexed to the petition marked 'P5', had objected to the said assessment on the following basis:

- a) The said land belongs to the State and therefore is not subject to rates<sup>3</sup>;
- b) The assessment is excessive and arbitrary;
- c) No reasons have been adduced.

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<sup>1</sup> වරිපනම් තක්සේරු දැන්වීම

<sup>2</sup> The 1<sup>st</sup> Respondent states that the value should have read as '1,785,000'.

<sup>3</sup> The Petitioners have not pursued with this objection, probably in view of the provisions of Section 136 of the Pradeshiya Sabha Act, which reads as follows: "All houses, buildings, lands and tenements within the limits of any Pradeshiya Sabha belonging to the State and leased or let by the State to any person, shall be liable to be assessed in respect of the rate or rates .....leviable under section 134 and every lessee or occupier of any such premises shall be liable to pay, and shall pay to the Pradeshiya Sabha, the rate or rates .....leviable in respect of the house, building, land or tenement so held or occupied."

In response to 'P5', by a letter dated 25<sup>th</sup> November 2008<sup>4</sup>, the 1<sup>st</sup> Respondent had requested the 1<sup>st</sup> Petitioner to be present at an inquiry scheduled for 1<sup>st</sup> December 2008, in order to consider the objections raised by the Petitioners. The Petitioners state that at the inquiry held on 1<sup>st</sup> December 2008 with the participation of the 2<sup>nd</sup> Petitioner and the officials of the Valuation Department, they took up the position that rates cannot be imposed as no services are being provided by the 1<sup>st</sup> Respondent to the 1<sup>st</sup> Petitioner, that no reasons have been adduced for the sudden imposition of rates and that in any event, the quantum of the assessment was excessive.

By a letter dated 5<sup>th</sup> December 2008<sup>5</sup> sent after the inquiry, the Petitioners had stated further *inter alia* that imposition of rates is arbitrary and unreasonable for the following reasons:

- a) No services are provided by the Pradeshiya Sabha which therefore has no moral right to impose rates;
- b) No reasons have been set out for the sudden imposition of rates from October 2008;
- c) In any event, the quantum of rates assessed is excessive in view of the locality and neighbourhood;
- d) The 1<sup>st</sup> Petitioner, the other investors and the Ministry of Industries have not been consulted prior to the imposition of rates.

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<sup>4</sup> A copy of the said letter has been annexed to the petition, marked 'P6'.

<sup>5</sup> This letter has been annexed to the petition, marked 'P7'.

Thus, it is apparent that the gravamen of the complaint of the Petitioners was that the 1<sup>st</sup> Respondent had no right to charge rates as no services were being provided to the 1<sup>st</sup> Petitioner and that the sudden imposition of rates in 2008, without affording the Petitioners a hearing and without adducing any reasons for such imposition, was arbitrary and unreasonable.

By a revised Notice of Assessment dated 22<sup>nd</sup> December 2008, annexed to the petition marked 'P8', the 1<sup>st</sup> Respondent had informed the 1<sup>st</sup> Petitioner that the annual value had been revised to Rs. 1,511,111 and that the rates payable for each quarter had been reduced to Rs. 30,222, which is 8% of the annual value.

The Petitioners have invoked the Writ jurisdiction of this Court, seeking a Writ of Certiorari to quash the Notices of Assessment marked 'P4' and 'P8', *inter alia* on the following grounds:

- a) The assessments 'P4' and 'P8' are totally without jurisdiction and unsupported by evidence;
- b) No reasons have been furnished for the issuing of the assessment;
- c) In any event, the quantum of rates is manifestly excessive in view of the locality of the land and in view of the fact that no services are rendered by the 1<sup>st</sup> Respondent;
- d) The assessment offends the principles of proportionality.

The basis of the Petitioners' case before this Court therefore was that the sudden imposition of rates is unreasonable as no services are being provided by the 1<sup>st</sup> Respondent. This is similar to what was set out in 'P7' referred to earlier. The Petitioners have not complained to this Court about the basis of the valuation applied by the 3<sup>rd</sup> Respondent.

In the written submissions filed on behalf of the Petitioners, the learned Counsel for the Petitioners has strenuously taken up the position that no reasons have been adduced by the 1<sup>st</sup> Respondent for the said assessments and that in any event, the quantum of rates is manifestly excessive. The learned Counsel has also cited the judgment of this Court in Gunewardena vs The Colombo Municipal Council and others<sup>6</sup> where it was held that in order to effectively challenge and canvass the decision of the Municipal Council, the assessee must be informed of the reasons for the increase in the quantum of rates.

The Pradeshiya Sabha Act No. 15 of 1987 contains several provisions relating to the imposition of rates. The power of a Pradeshiya Sabha to impose rates is contained in Section 134(1) of the Act, which reads as follows:

"Every Pradeshiya Sabha may, 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 in localities declared by the Pradeshiya Sabha, with the approval of the Assistant Commissioner to be 'built up localities'<sup>7</sup>."

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<sup>6</sup> CA (Writ) Application Nos. 52/1996 and 53/1996; CA Minutes of 24<sup>th</sup> February 1999.

<sup>7</sup>දියුණු ප්‍රදේශ

The 3<sup>rd</sup> Respondent has submitted to this Court, marked '3R1', a copy of the notification by which the 1<sup>st</sup> Respondent had declared the area within which the aforementioned land is situated as a 'built up locality'. It is only upon a determination being made that a particular area is a 'built up locality' can the Pradeshiya Sabha impose rates. Thus, the decision of the 1<sup>st</sup> Respondent to charge rates from the 1<sup>st</sup> Petitioner is within the provisions of the said Act.

The Petitioners appear to be under a misapprehension that the levying of rates is directly attributable to the provision of services by a local council. This Court observes that the Act does not draw a direct nexus between the provision of services by a Pradeshiya Sabha and the charging of rates. It is common ground that a person living within the administrative limits of any local council area is provided common amenities and services such as public roads, street lighting, garbage disposal, medical clinics, burial grounds etc. The finances necessary for the provision of such services may not be provided entirely by the Central Government and hence, a local council should have the right to collect rates from persons and entities resident or carrying on business within their administrative boundaries. The fact that the land leased by the 1<sup>st</sup> Petitioner is situated within an industrial estate and that services within that estate are paid for by the members of that industrial estate, does not exempt such persons from paying rates for the services that may be provided by the 1<sup>st</sup> Respondent Pradeshiya Sabha. Furthermore, the quantum of rates chargeable has no nexus to the scope of the services or the quality of the services that may be provided by a local council, as long as the determination of the quantum is not arbitrary, unreasonable or disproportionate. Thus, this Court is of the view that the 1<sup>st</sup> Petitioner is liable to pay rates to the 1<sup>st</sup> Respondent



Pradeshiya Sabha in respect of the land that it has leased in the said industrial estate.

Once a determination is made in terms of Section 134(1) of the Act, the next step required in terms of the Pradeshiya Sabha Act is to assess the annual value of the properties in question. Provision in this regard is found in Section 140(1) of the Act, which reads as follows:

“For the preparation of a new assessment, the annual value of each house, building land and tenement within the limits of any Pradeshiya Sabha shall be assessed by the Chief Valuer or any person or persons approved by the Pradeshiya Sabha with the approval of the Assistant Commissioner.”

Thus, the determination of the annual value is not made by the Pradeshiya Sabha but by the Chief Valuer, who not only has expertise in the valuation of land but is independent of the 1<sup>st</sup> Respondent. Furthermore, the Chief Valuer would have to abide by the principles relating to valuation, which would ensure that arbitrary valuations are not imposed. The 3<sup>rd</sup> Respondent Chief Valuer has stated in the Objections filed in this Court that the initial annual valuation reflected in 'P4' was determined by the 3<sup>rd</sup> Respondent and that the annual value has been correctly assessed by the 3<sup>rd</sup> Respondent. The 3<sup>rd</sup> Respondent has also stated that, 'the valuation is made having regard to the principles and tenets of rating valuation and the applicable provisions of the Act'. The 1<sup>st</sup> Respondent has also stated that the said assessments are computed based on principles of valuation. This Court observes that the Petitioners have not denied this position of the Respondents in their counter

affidavits nor presented any material to contradict the annual value given by the 3<sup>rd</sup> Respondent.

In terms of Section 141(3) of the Act, the Notice of Assessment must specify that written objections to the assessment will be received at the Pradeshiya Sabha office, within thirty days from the date of service of the notice. Any objections received shall be recorded on a book maintained by the Pradeshiya Sabha and the person objecting shall be informed of the place and the time at which the objections will be investigated. Section 141(6) provides that once any objection to an assessment is investigated and disposed of, the Pradeshiya Sabha shall cause the decision thereon to be notified to the objector, and for such decision to be noted in the book of objections, and for any necessary amendment to be made in the assessment list.

There is no dispute between the parties that the above procedure was followed by the 1<sup>st</sup> Respondent and that the 1<sup>st</sup> Petitioner was duly afforded an opportunity of presenting its objections. The amendment of the annual value to Rs. 1,511,111 too has been carried out by the 3<sup>rd</sup> Respondent, taking into consideration the representations made by the Petitioners.

This Court must observe that the 1<sup>st</sup> Respondent has followed the procedure laid down in the Act when determining the rates payable by the Petitioner and to that extent, the decision of the 1<sup>st</sup> Respondent to issue 'P4' and 'P8' is neither illegal nor arbitrary.

The Petitioners' complaint to this Court is that there was no legal basis to issue an assessment to pay rates and that reasons have not been adduced as to why

an assessment had been issued. This Court has already expressed the view that the 1<sup>st</sup> Respondent has the legal authority to issue a notice of assessment requesting the 1<sup>st</sup> Petitioner to pay rates. This Court is of the view that in doing so, the 1<sup>st</sup> Respondent is not required in law to provide any justification or reasons as to why an assessment is being issued or as to why the 1<sup>st</sup> Petitioner has to pay rates.

This Court observes that the Petitioners have not challenged the basis of the valuation. This becomes significant in the context of the Respondents' position that the valuation has been done according to the principles and tenets of rating valuation.

While it is not practical for a local council to inform each and every householder the basis on which the initial annual value has been determined or the basis on which the annual value has subsequently been amended, this Court is of the view that the valuation must be determined on a rational basis and such determination must be available with the Pradeshiya Sabha to be made available, if requested, to an assessee. This is especially so because the Act provides an assessee dissatisfied with an assessment an opportunity of objecting to the assessment. This Court must observe that the Petitioners in this case have not requested the Respondents to submit the basis of the valuation. However, if such a request is made, the 1<sup>st</sup> Respondent is under a legal duty to provide the necessary material.

The Petitioners have cited the judgment of this Court in Gunawardena<sup>8</sup> in support of its argument that reasons must be given for the assessment. In that

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<sup>8</sup> Supra.

case, the Municipal Council had assessed the annual value of the first property at Rs. 5000, in 1989. In 1991, this had been increased to Rs. 34,200 and in 1995, it had been increased to Rs. 144,000, but after objections, reduced to Rs. 120,000. With regard to the second property, the Municipal Council had assessed the annual value at Rs. 6000, in 1989. In 1991, this had been increased to Rs. 32,400 and in 1995, it had been increased to Rs. 134,400 but after objections, reduced to Rs. 96,000. Court observed that no reasons had been given by the Municipal Council for the increase of the annual value of the first property by 24 times and 16 times in respect of the second property. The Court also found it difficult to fathom how a property initially valued at Rs. 5000, was subsequently valued higher than a property which was initially valued at Rs. 6000. The situation was compounded by the failure of the Municipal Council to explain the increase, even to Court. It is in this context that this Court held that there is no rationality with regard to the assessment, which when challenged required an explanation be provided for the extraordinary increase and the sudden change. The situation that has arisen in this application is different to that in Gunawardena and as stated earlier, the basis of the valuation has not been put in issue by the Petitioners before this Court or previously.

In these circumstances, this Court does not see any legal basis to issue Writs of Certiorari to quash the Notices of Assessment marked 'P4' and 'P8'. The application of the Petitioners is accordingly dismissed, without costs.

**Judge of the Court of Appeal**