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

In the matter of an Application under and in terms of Article 140 of the Constitution for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus.

C.A (Writ) Application No. 226/2013

1. Penpals Limited.
2. Fuji Graphics (Ceylon) Limited.

Both at No. 545/1, Sri Sangaraja Mawatha, Colombo 10.

Petitioners

Vs.

1. V.K.A. Anura,
   Municipal Commissioner,
   Town Hall, Colombo 07.

2. A.A.W.N. Adhikari,
   Municipal Assessor,
   Colombo Municipal Council,
   Town Hall, Colombo 07.

3. K.D. Chithrapala,
   Municipal Treasurer,
   Municipal Treasurer's Department
   Town Hall, Colombo 07.

4. The Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **Arjuna Obeyesekere, J**

Counsel: S.A.Parathalingam, P.C with N. R. Sivendran and Ms. Dushyanthi Jayasuriya for the Petitioners

Ranil Samarasuriya with Yohan Gamage for the 1st, 2nd and 3rd Respondents

Ms. Udeshi Senesinghe, State Counsel, for the 4th Respondent

Written Submissions of the Petitioners tendered on: 26th September 2018

Written Submissions of the 1st – 3rd Respondents tendered on: 23rd October 2018

Decided on: 19th November 2018

Arjuna Obeyesekere, J

When this matter was taken up for argument on 4th July 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.

The Petitioners have filed this application, seeking *inter alia* the following relief:

a) Writs of Certiorari to quash the decisions contained in the documents annexed to the petition, marked '**X11**'[1], '**X15**'[2] and '**X21**'[3];

b) A Writ of Prohibition prohibiting the 1st – 3rd Respondents from recovering or taking steps to recover the rates set out in the Schedule annexed to the petition marked '**X20**'[4];

c) A Writ of Mandamus directing the 1st – 3rd Respondents to duly investigate and/or inquire the matters raised by the Petitioners in their letter dated 23rd January 2013, annexed to the petition marked '**X18**'[5];

d) A Writ of Mandamus directing the 1st – 3rd Respondents to re-assess the premises No. 545/1, Sangarajah Mawatha, Colombo 10 from the year 1997.

The 1st and 2nd Petitioners are duly incorporated companies. The 1st Petitioner states that it purchased a land in 1980 bearing assessment No. 545, Sangharaja Mawatha, Colombo 10, containing in extent of 1A 2R 30P. The assessment number had subsequently been amended to No. 545/1. The Petitioners state that the buildings situated on the said premises were constructed over 50 years ago and that their offices and factories are situated in these buildings.

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[1] 'X11' is a demand notice dated 28th February 2012 sent by the 1st Respondent demanding the payment of a sum of Rs. 9,079,560 being the arrears of rates due as at 31st December 2011.

[2] 'X15' is the final reminder dated 16th November 2012 sent by the 1st Respondent seeking the payment of a sum of Rs. 9,079,560 being the arrears of rates due as at 31st December 2011.

[3] 'X21' is a seizure notice dated 21st June 2013 issued by the 1st Respondent in respect of premises No. 545/1, Sangaraja Mawatha informing that the said premises have been seized for non-payment of a sum of Rs. 9,079,560 being the arrears of rates due as at 31st December 2011.

[4] 'X20' is a schedule prepared by the Petitioners setting out the rates payable for the period 1995 – 2012.

[5] 'X18' is a letter sent by the Attorney-at-Law for the Petitioners seeking a reconsideration of the rates payable.

The Petitioners claim that the said buildings are presently in a dilapidated condition and that their businesses have not been profitable for several years.

This application relates to two separate matters. The first is the Notice of Assessment issued by the 1st Respondent for the year 2012 and the alleged failure by the 1st Respondent to consider the objections of the 1st Petitioner and to grant the Petitioners a hearing in respect of the said objections. The second is the non-payment by the Petitioners of arrears of rates due as at 31st December 2011 in respect of the said premises and the steps taken by the 1st Respondent to recover the said arrears in rates.

This Court would now proceed to consider the first matter.

Detailed provisions with regard to the assessment of premises for the purpose of the imposition of rates, issuing of notices of assessment, imposition of rates etc are contained in the Municipal Councils Ordinance No. 29 of 1947, as amended (the Ordinance). In terms of Section 235(3) of the Ordinance, the Council shall cause a Notice of Assessment to be served on or left at the premises of every occupier, demanding payment of the rate or rates leviable within such time and in such proportions as the Council may deem reasonable. Section 235(4) requires the said notice to specify that written objections to the assessment will be received at the Municipal office within one month from the date of service of the notice. Section 235(8) of the Ordinance specifies that every assessment against which no objection is taken shall be final for that year.

The procedure to be followed when written objections have been lodged in terms of the Ordinance has been specified in Section 235 (5) – (7). In terms of Section 235(5) of the Ordinance, the Municipal 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 is thereafter required to give notice in writing to each objector of the day on which and the place and the time at which his objections will be investigated. Section 235(6) of the Ordinance provides for the investigations into the objections to be carried out in the presence of the assessee and for the investigation to be adjourned if need be, where the assessee is absent. In terms of Section 235(7) of the Ordinance, once an 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 in the assessment book.

The Petitioners state that they received a Statutory Notice of Assessment dated 31st January 2012, a copy of which has been annexed to the petition marked '**X9**', in respect of the said premises, for the year 2012. By the said notice, the 1st Respondent had informed that by virtue of the provisions of the Municipal Council Ordinance, the annual value of the said property had been assessed for 2012 at Rs. 2,666,400 and accordingly, the amount of rates payable per quarter would be Rs. 233,310. The reverse of '**X9**' specified that if the assessee is aggrieved by the said assessment, written objections to the said assessment may be lodged with the 1st Respondent within a period of one month from the date of service of the said notice specifying the grounds upon which the objections are made.

The Petitioners state that a letter dated 23rd February 2012 annexed to the petition marked '**X10**' containing the objections of the Petitioners was sent to the 1st Respondent. The Petitioners first complaint to this Court is that the 1st Respondent did not follow the aforementioned procedure laid down in the Municipal Councils Ordinance and did not afford the Petitioners a hearing, to which the Petitioners state they are entitled to.

In their Statement of Objections, the 1st – 3rd Respondents have admitted the receipt of the letter '**X10**'. The Respondents state that a notice was thereafter sent under registered post to the Managing Director of the Petitioners, requesting him to appear at an inquiry scheduled for 25th April 2012. Although the Respondents have annexed a copy of the registered receipt article and the list of recipients containing the name of the said Managing Director, marked '**R2**' and '**R2A**' respectively, this Court observes that the Respondents have not produced a copy of the all important notice that was sent to the Petitioners by '**R2**'.

The Respondents state that the Petitioners failed to attend the said inquiry scheduled for 25th April 2012 and hence, the objections were rejected. This Court observes that the Respondents have not provided any material to substantiate its position that it carried out an investigation into the objections raised by the Petitioners in '**X10**' nor have they submitted any evidence to show that the 1st Respondent complied with the rest of the provisions of Section 235 (5) – (7) of the Ordinance, including the requirement to inform the assessee of the decision on the objections and the recording of such decision on the book of objections. Therefore, the Respondents have failed to satisfy this Court that it in fact did comply with the said provisions of the Ordinance.

This Court is of the view that the detailed provisions set out in Section 235 (5) – (7) of the Ordinance must be complied with by the 1st Respondent and that the 1st Respondent was under a legal duty to consider the objections of the Petitioners, prior to a final decision being taken in terms of Section 235(7) of the Ordinance.

In these circumstances, this Court is of the view that this is a fit case in which a Writ of Mandamus should be issued on the 1st Respondent directing that the Petitioners be afforded a hearing in terms of Section 235(6) of the Ordinance in respect of the objections[6] raised in the letter dated 23rd February 2012 marked '**X10**' with regard to the Notice of Assessment issued for the year 2012 marked '**X9**', before taking steps in terms of Section 235(7) of the Ordinance.

The second matter raised by the Petitioners in this application relate to the steps taken by the 1st Respondent to recover the arrears of rates due from the Petitioners as at 31st December 2011, in respect of the said premises.

Soon after the Petitioners responded to the Notice of Assessment for 2012 marked '**X9**' by letter dated 23rd February 2012 marked '**X10**', the 1st Respondent had sent the Petitioners a demand notice dated 28th February 2012, annexed to the petition marked '**X11**', which reads as follows:

> "Notice is hereby given that if the arrears of rates and warrant costs due on the undermentioned property is not paid within 14 days from the date

[6] The complaint of the Petitioners that other premises situated in close proximity to the property in question had been assessed differently in 2012 can also be considered with the objections raised by the Petitioners in 'X10'.

hereof, the movable property of the owner or occupier found in or upon the premises is liable to be seized in terms of Section 252 of the Municipal Council Ordinance"

The Petitioners are seeking a Writ of Certiorari to quash '**X11**' on the basis that it is illegal and arbitrary. At the outset, this Court observes that the said notice '**X11**' does not seek to recover any rates payable for the year 2012 and has no nexus with the Notice of Assessment for 2012 marked '**X9**'.

This Court has examined '**X11**' and observes that what is sought to be recovered in terms of the said notice is a sum of Rs. 9,079,560 which is the arrears of rates due on the said premises, as at 31st December 2011. The Petitioners have submitted with the petition marked '**X8**', the 'Statement of Account' with regard to the rates payable for the said premises for the period 1993 – 2012. This Court has examined '**X8**' and observes that even though payments have been made from time to time from 1995, although not on the scheduled date, the Petitioners have not paid majority of the rates due for the years 2000 – 2011. The Petitioners have been in default of their obligation to pay rates for a long period of time and have been consistently in arrears of rates since 1995. For instance, there was a sum of Rs. 299,703 in arrears as at the end of 1995, a sum of Rs. 607560 in arrears as at the end of 2000, a sum of Rs. 3,191,328 in arrears as at the end of 2005 and a sum of Rs. 8,061,480 as at the end of 2010. There has been a gradual build up of the arrears over the years, culminating in the 1st Respondent demanding that a sum of Rs. 9,079,560, which is the arrears of rates due on the said premises as at 31st December 2011, be paid.

The Petitioners have annexed to the petition, marked '**X20**', a table comparing the amounts claimed by the 1st Respondent as the rates and arrears of rates due and the amount that the Petitioners admit is due. According to '**X20**', the sum due to the 1st Respondent as at 31st December 2011 is Rs. 9,079,560 whereas according to the Petitioners' own calculations, the sum due is Rs. 9,206,260, which is Rs. 126,700 higher than what the 1st Respondent is claiming is due as arrears in rates. Thus, this Court is of the view that the Petitioners are estopped from claiming that the sum claimed by the 1st Respondent is arbitrary.

As observed above, in terms of Section 235 (4) of the Ordinance, any objection to a Notice of Assessment must be raised within one month and would become final in the absence of any objection. The Petitioners have not submitted any documents to prove nor have they claimed in their petition that they objected to the Notices of Assessment issued by the 1st Respondent since 1995, as and when the notices of assessment for each year was issued. Thus, the Petitioners have forfeited their right to challenge the quantum of rates assessed during the period 1995 – 2011 and the 1st Respondent is entitled to take steps to recover the rates and arrears in rates. This Court is therefore of the view that the Petitioners are estopped from claiming in 2012, that the quantum of rates imposed from 1995 to 2011 is arbitrary or illegal or without any basis. It is thus clear that a Writ of Certiorari will not issue to quash '**X11**'

The 1st Respondent had thereafter published in the Daily News newspaper of 19th May 2012, a notice of the properties identified to be acquired for the non-payment of rates. This notice, which has been annexed to the petition marked '**X12**' contains the premises in question. This Court has examined '**X12**' and

observes that the proposed acquisition of the properties referred to therein is for the purpose of recovering the rates in arrears as at 31st December 2011. By '**X12**', the owners of the properties referred to therein have been given a further opportunity of settling their dues as well as an opportunity of submitting proof of payments which have not been taken into consideration by the 1st Respondent. Once again, this Court must observe that '**X12**' does not have any nexus to the Notice of Assessment for 2012, marked '**X9**'.

By a letter dated 21st June 2012 annexed to the petition marked '**X13**', the Petitioners have explained the difficulties they were going through and requested that they be permitted to 'arrive at a workable solution'. By a further letter of the same date annexed to the petition marked '**X14**', which is a response to '**X12**', the Petitioners have set out the payments that they have made in respect of six properties. This Court however observes that none of the payments said to have been made by the Petitioners and referred to in '**X13**' and '**X14**' relate to the premises in question, namely No. 545/1, Sangarajah Mawatha, Colombo 10. Thus, it is clear to this Court that the Petitioners have not taken any steps to pay the arrears in rates even though they have requested that they be permitted to 'arrive at a workable solution'.

The 1st Respondent had thereafter issued a final reminder dated 16th November 2012, annexed to the petition marked '**X15**', which reads as follows:

> "උක්ත දේපල සම්බන්ධයෙන් 2011.12.31 දිනට හිඟ වරිපනම් බදු මුදල 9,079,560.00 වේ. එම හිඟ මුදල ගෙවන ලෙස ඔබ වෙත වෘවස්ථාපිත දැන්වීම් සියල්ල එවා ඇත. ඉන් පසු මහ නගර සභා අඥා පනත අනුව මෙම දේපල සභාවට පවරා ගෙන හිඟ වරිපනම් බදු මුදල් අය කර ගැනීමට පියවර ගන්නා බව දන්වමින් 2012.05.19 දින දිනමිණ, ඩේලිනිවුස් තිනකරන් යන පුවත් පත් වල දැන්වීම් පල කර ඇත. පුවත් පත් දැන්වීමෙන්

මාස 03 කට පසු එනම් 2012.08.19 දින නැවත මේ සම්බන්ධව සිහි කැඳවීමක් කර ඇත.

මේ සඳහා කිසිදු ප්‍රතිචාරයක් ඔබ විසින් දක්වා නොමැත. එම නිසා මහ නගර සභා ආඥා පනතේ විධිවිධාන අනුව මෙම දේපල වෙන්දේසි කිරීමට පියවර ගැනීමට තීරණය කර ඇති බව කාරුණිකව දන්වම්."

This Court observes that what was sought to be recovered in terms of the final reminder '**X15**' was the arrears of rates as at 31st December 2011, which this Court has already held the 1st Respondent was empowered to do. Furthermore, it is clear that '**X15**' too, has no nexus to the Notice of Assessment '**X9**'. This Court is of the view that it was within the power of the 1st Respondent to issue the said final reminder '**X15**' and therefore, a Writ of Certiorari will not issue to quash '**X15**'.

This Court observes that after sending the final reminder, to which too there was no response by way of payment of the amount in arrears, the 1st Respondent issued the Seizure Notice dated 21st June 2013 annexed to the petition marked '**X21**'. The Petitioners have complained that the said seizure notice is illegal and arbitrary and contrary to the representations made by the Petitioner by '**X10**'. This Court has examined '**X21**' and observes that it has been issued with regard to the recovery of the arrears of rates due as at 31st December 2011, which means that '**X21**' too does not have any nexus to the Notice of Assessment '**X9**' and to the representations made by the Petitioners by '**X10**'.

Section 252(1) of the Ordinance contains provisions relating to the recovery of rates in arrears and the power to seize and auction properties in order to

recover rates in arrears. The relevant parts of Section 252(1) are re-produced below:

> "(1) If the amount of any rate assessed under this Ordinance or the amount of any tax imposed thereunder is not paid into the Municipal office within such time as the Council may direct, it shall be the duty of the Commissioner to issue a warrant signed by him to some collector or other officer of the Council named therein directing him—
>
> (a) in the case of non-payment of any rate, to levy such rate and the costs of recovery by seizure and sale of all and singular the movable or immovable property of the proprietor or of any joint proprietor, of the premises on account of which such rate may be due, and of all movable property, to whomsoever the same may belong, which may be found in or upon any such premises;"

As set out earlier, as at 31st December 2011, the Petitioners were admittedly in arrears of rates in a sum of Rs. 9,079,560 in respect of the said premises No. 545/1, Sri Sangharaja Mawatha, Colombo 10. The Petitioners have not complied with the demand notice '**X11**' and the final reminder '**X15**' issued by the 1st Respondent. Hence, this Court is of the view that the 1st Respondent is entitled in terms of Section 252(1) of the Ordinance to issue the Seizure Notice '**X21**' and proceed to seize the property in respect of which the rates are due. The 1st Respondent would also be entitled, in the event of the Petitioners not paying the arrears in rates, to sell by public auction the said property and recover the rates, as provided by Section 252(1) of the Ordinance. This Court does not see anything illegal or irrational or arbitrary in the 1st Respondent

exercising the powers conferred on it by law. In these circumstances, this Court does not see any legal basis to issue Writs of Certiorari to quash '**X11**', '**X15**' and '**X21**', a Writ of Prohibition preventing the 1st Respondent from taking steps to recover the rates due as at 31st December 2011 and the Writ of Mandamus prayed for, in paragraph (f) of the prayer to the petition.

This Court observes that the Writ of Mandamus prayed for in paragraph (e) of the prayer to the petition seeks a direction on the Respondents to inquire into the matters raised by the letter marked '**X18**', which covers the Notice of Assessment marked '**X9**' issued for 2012 and the arrears of rent due as at 31st December 2011, set out in '**X11**'. This Court has already concluded that the imposition and recovery of rates by the 1st Respondent for the period upto 31st December 2011 is in accordance with the law and therefore the necessity to issue a Writ of Mandamus to inquire into the assessment in respect of the said period, as prayed for in paragraph (e) does not arise. However, as this Court is of the view that the Petitioner should be given a hearing in respect of the Objections raised in **'X10'** with regard to the Notice of Assessment **'X9'**, this Court issues a Writ of Mandamus directing the 1st Respondent to afford the Petitioners a hearing in terms of Section 235(6) of the Ordinance in respect of the objections raised in the letter dated 23rd February 2012 marked '**X10**' with regard to the Notice of Assessment issued for the year 2012 marked '**X9**', before taking steps in terms of Section 235(7) of the Ordinance.

There is one other matter that this Court would like to advert to. The Petitioners have moved that the affidavit tendered on behalf of the 1st – 3rd Respondents be rejected on the basis that the affidavit is dated one day prior to the Statement of Objections. This identical objection, although in relation to

a petition filed under Section 757(1) of the Civil Procedure Code, was considered and overruled by this Court in **Distilleries Company Limited vs Kariyawasam and others**[7]. This Court has examined the said judgment and is in agreement with the reasoning adopted in that case. Accordingly, this Court is of the view that the said objection is without merit. The Petitioners have also stated that a proxy cannot be filed by several Attorneys-at-Law and that the 1st – 3rd Respondents cannot appoint several Attorneys-at-Law. This objection has been considered and overruled in **Appuhamy and another vs Kandiah**[8]. This Court has examined the said judgment and is in agreement, for the same reasons set out therein, that the said objection does not have any merit. In any event, this Court observes that the material presented by the Petitioners' was sufficient for this Court to come to the conclusion that the Writs of Certiorari, Prohibition and Mandamus, as prayed for, would not issue in the circumstances of this case. This Court has however relied upon material from the Statement of Objections in considering whether to grant a Writ of Mandamus in respect of **'X10'**.

Subject to the above, this application is dismissed, without costs.

Judge of the Court of Appeal

[7] 2001 (3) Sri LR 119.
[8] Sriskanthas Law Reports Vol 1 98.