

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

In the matter of an Application for a mandate in the nature of a Writ of Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Case No. 184/2014 (Writ)

Buddakoralalage Ranjitha Shiromani,
No. 162/5, Kaduwela Road,
Malabe.

PETITIONER

-Vs-

G.H. Buddhadasa,
The Mayor,
Kaduwela Municipal Council,
Kaduwela.

RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : C.E. de Silva with Sarath Walgama for the
Petitioner.

Ananda Kasthuriarachchi with Udenika
Abesiriwardena, Shehara Kadaradalage and M.
Lamahewa for the Respondent.

Decided on : 26.10.2015

A.H.M.D. Nawaz, J.

The Petitioner in this case seeks a mandate in the nature of a writ of mandamus on the Respondent to issue copies of extracts from the assessment register of the Municipal Council of Kaduwela in respect of premises bearing assessment No.388/4, Kaduwela Road, Malabe for the period ranging from the date of the 1st assessment to the year 2014.

The Petitioner asserts that both by a Deed of Transfer bearing No. 644 dated 19.01.2013 and 28.01.2013 as well as by prescriptive possession she has become the lawful owner of the premises referred to above, which is a residential premises situated within the administrative limits of the Municipal Council of Kaduwela.

By way of a letter dated 21.03.2014 the Petitioner had made an application through her Attorney-at-Law to the Municipal Commissioner of Municipal Council of Kaduwela to obtain certified extracts from the assessment register pertaining to the premises but this request appears to have proved futile as an officer who is designated in the petition as one Mrs. U.G. Anula of the Municipal Council of Kaduwela is alleged to have informed the Petitioner that the certified extracts from the assessment register would not be made available.

The Petitioner further avers that she attempted again to obtain copies of the relevant extracts by way of another written request on 24.04.2014 but this request too was turned down allegedly by an employee of the Municipal Council who had been manning a counter at the said Council. The Petitioner followed this up by dispatching via registered post a copy of this demand addressed to the Municipal Commissioner of the Municipal Council of Kaduwela and copies of the demand and postal article have been appended to the petition as X3 and X4 respectively.

The thrust of this application for a writ of mandamus as asserted by the Petitioner is traceable to Section 235 (1) and (2) of the Municipal Councils Ordinance No.2 of 1947 as amended.

The aforesaid section could now be set down:-

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 relates to his premises.*

The Petitioner contends that these two provisions of the Municipal Council Ordinance No.2 of 1947 as amended give the Petitioner a right to make an application to the Municipal Council of Kaduwela to obtain certified extracts from the assessment book in respect of the premises bearing No. 388/4, Kaduwela Road, Malabe for the relevant period. Another contention of the Petitioner is that the Respondent (the Mayor of Municipal Council of Kaduwela) is under a mandatory legal duty to issue to the Petitioner the certified extracts.

Apart from the argument based on Sections 235 (1) and (2) of the Municipal Council Ordinance No.2 of 1947 as amended, the Petitioner has also mounted an argument premised on Sections 74 and 76 of the Evidence Ordinance. Though there is a conflation of the provisions of the Municipal Council Ordinance and the Evidence Ordinance both in the petition and written submission of the Petitioner, for the reasons I would set down presently, the argument based on "**public documents**" flowing from Sections 74 and 76 of the Evidence Ordinance has to be alternative to the statutory right in Section 235 of the Municipal Council Ordinance as both these sections relate to distinct situations. In a nutshell the Petitioner's argument that she is entitled to obtain certified extracts of assessment in respect of the premises emanates, according to her, from two sources-namely Municipal Council Ordinance and Evidence Ordinance. By virtue of Sections 74 and 76 of the Evidence Ordinance, the Petitioner contends that she enjoys the right to obtain certified extracts of assessment (Section 76) because the assessment

book constitutes a *public document* in terms of Section 74 of the Evidence Ordinance. As the argument goes, all these provisions impose a corresponding duty on the part of the Respondent Mayor to issue to the Petitioner the certified extracts from the assessment register in respect of the above premises for the relevant period.

Before I expatiate on this further, let me set out the rival contention of the Mayor of Kaduwela that has been raised in the statement of objections and his affidavit.

Case for the Respondent Mayor

In the statement of objection that has been filed on behalf of the Mayor of the Municipal Council of Kaduwela - the solitary Respondent to this case, the following position in regard to ownership of this premises has been pleaded.

The objections raise some factual positions as to the ownership of the premises in question namely;

1. The Petitioner is not the current owner of the premises.
2. By virtue of a Deed of Transfer bearing No.6993 dated 18.11.2011, one Buddakoralage Devika Priyangani had become the owner of the said premises and the records of the valuation department of the Council declare the said Buddakoralage Devika Priyangani as the owner.

In support of these claims the Respondent Mayor has marked and produced copies of the said Deed of Transfer and the assessment record as R1 and R2.

As regards the claim of the Petitioner that the assessment register becomes a public document in view of the Municipal Councils Ordinance the Respondent contends that in terms of Section 235 (1) of Municipal Councils Ordinance the Municipal Council has to maintain an assessment book and according to Section 235 (2) the statutory scheme provides a right of inspection only to two categories of person namely an *owner* or an *occupier*. It is further argued that even if the Petitioner is the owner of the premises she can only inspect the assessment book but there is no right to obtain a copy of the assessment book.

In any event it has been contended that the assessment register cannot be considered a public document in terms of Section 74 of the Evidence Ordinance as the assessment register maintained at the Council does not fall within the parameters of 74 (a) of the Evidence Ordinance.

As it is not a document forming the acts, or records of the acts of an official body or a tribunal the Counsel for the Respondent has also relied on the case of *Appuhamy v. Ackmon Singho* 38 N.L.R 165 where it was held that a registry kept by a Vel Vidane is not a public document. Similarly in *Ramanather v. Ponnai* 2 CWR 333 it was held that a temple register kept by a clerk in the Kachcheri for the information of the government agent is not a public document even under Section 74 of the Evidence Ordinance.

The Respondent has further contended that the Municipal Council of Kaduwela which is not a party to the present application has decided on a policy not to issue certified copies or extracts to 3rd parties as there have been a series of frauds committed by using details in the assessment registers to prepare fraudulent deeds.

In the circumstances it is argued that as the Council owes no duty to a 3rd party such as the Petitioner, no mandamus should issue.

Legal Matrix

Both these rival submissions could now be looked at from statutory indicia. It is Section 235 (2) of the Municipal Councils Ordinance that gives a right to *an owner or occupier or an authorized agent* of any house, building, land, or tenement, or his authorized agent to *inspect any portion of the assessment book*.

The precedent fact before the right to inspect arises is that the application for inspection should be made either by *the owner or occupier or an authorized agent* of the premises. This factual finding has to be made by the statutory functionary on whom the duty has been imposed namely the Municipal Council-the corporate personality.

Whilst the Petitioner asserts that she became the owner of the premises by a Deed of Transfer dated 19.01.2013 the Respondent has contended that one Devika Priyangani is

reflected in their records as the owner of this premises by a virtue of a Deed of Transfer dated 18.11.2011. Thus the ownership of this premises has been put in issue by the Respondent.

This position of the Respondent Mayor that it is one Devika Priyangani who is the owner of the premises has not been contradicted by a counter affidavit as the Journal Entry dated 26.09.2014 indicates that the Counsel for the Petitioner has made an express assertion before this Court that the Petitioner would not be filing any counter affidavits and moreover when this matter came up before this Court on 05.05.2015 the parties stated that this application may be disposed of on the written submissions. No attempt has been made by the Petitioner to controvert the position taken by the Respondent that according to the records the said Devika Priyangani continues to be the owner of the premises. In the circumstances the question arises whether the Petitioner does enjoy the right of inspection as far as the relevant assessments are concerned.

Section 235 (1) and (2) of the Municipal Council Ordinance

It is evident that Section 235 (2) of the Municipal Council Ordinance limits the right of inspection of any portion of the assessment book *only to an owner or an occupier of the house*.

This is a matter for the primary decision maker in the Council but the Mayor-the sole Respondent in the case asserts that the Petitioner is not the current owner of this premises. As I stated before there is no material to controvert this statement by way of a counter affidavit except the Deed of Transfer bearing No.644 and attested on 19.01.2013 that has been attached to the petition. The resultant position is that whilst the Deed of Transfer bearing No.6993 which is dated 18.11.2011 has been produced by the Respondent indicating that one Devika Priyangani became the owner of the premises in 2011 and her name is still reflected in the records of the Municipal Council, the Petitioner asserts that she became the owner of this premises in 2013 by a Deed of Transfer bearing No.644. It appears that the Municipal Council does not seem to possess this information as it is apparent from the affidavit of the Mayor that the name

of the Petitioner is nowhere to be found in their records as the owner of the premises. As I said before, this position of the Mayor remains uncontroverted by the Petitioner. It is my view that if the Municipal Council does not possess this fact of ownership of the Petitioner, it is the bounden duty of the Petitioner to bring it to the attention of the Municipal Council and have the records regularized by furnishing her name as the new owner. It is a salient fact that the Respondent Mayor has produced before this Court a copy of the Deed of Transfer bearing No.6993 in favor of Devika Priyangani and he couldn't have done so unless this copy of the deed had been handed over to the Municipal Council after its execution in 2011. If the ownership was transferred to the Petitioner in 2013, the only irresistible inference that this Court can draw from the absence of any reference to the Petitioner's Deed in the statement of objections of the Mayor is that a copy of the Petitioner's Deed of Transfer has not been handed over to the Municipal Council as does usually happen after execution of deeds.

This Court is not unmindful of the long held practice that prevails in this country that once a Deed of Transfer is executed in respect of premises falling within a Municipal Council, a copy of the deed along with a list of devolution is handed over to the local authority concerned and invariably an abstract of title (AT-form) is perfected. In this manner the local authority is notified of the change of ownership and the name of the new owner is entered in the records of the Municipal Council. The absence of the name of the Petitioner from the records of the Municipal Council, in the absence of any *mala fides* asserted against the Council for non appearance of the Petitioner's name in the books of the Council as the current owner, appears to be explicable on the basis that the change of ownership has not been notified to the Council *post* execution of the Deed of Transfer bearing No.644 in 2013. That explains as to why the Respondent Mayor holds out Devika Priyangani as the owner in his statement of objections. If the Petitioner is now the new owner of the premises, the fact has to be borne out by the Respondent and this Court does not find the material in the affidavit of the Respondent Mayor who reiterates that the Petitioner is not the owner of the premises.

It is not for this Court to embark upon the title of the parties because this Court exercising its powers of judicial review in terms of Article 140 of the Constitution does not engage in an investigation of title. As the issue turns on disputed facts, this Court is denuded of jurisdiction to go into such issues in judicial review.

Merely because the Petitioner did not apprise the Municipal Council of her ownership in the prescribed manner provided such a prescribed procedure of formal notification to the Council is required of every transferee of premises within the municipality of Kaduwela, the failure to follow that procedure on the part of the Petitioner cannot be overcome by instituting an application under Article 140 of the Constitution. The Council does not appear to have been told that the Petitioner is the new owner of the premises. How would the Council know that the Petitioner has become the new owner? If the Mayor asserts on oath that the records in the Municipal Council do not indicate the Petitioner as the owner, in the absence of a counter to this assertion this Court cannot make use of the deed appended to the petition to draw conclusions that the Petitioner is the owner whilst the Respondent Mayor has put forward another deed bearing the name of Devika Priyangani as the owner. Such investigation as is necessary to determine the right-holder under Section 235 of the Municipal Council Ordinance has to be made by the Municipal Council and it is incompetent for this Court to engage in that exercise.

Section 235 of the Municipal Council Ordinance creates rights of inspection of assessment only for *an owner or occupier of any house, building, land or tenement, or his authorized agent*.

The duty to allow inspection arises only upon proof of facts which establish that the Petitioner is the owner or occupier or the authored agent of the premises. No stranger other than the above categories enjoys access to assessments maintained by the Council. In this context the interpretive provision namely Section 327 (1) of the Municipal Councils Ordinance too becomes relevant.

Section 327 (1) of Municipal Councils Ordinance defines an owner as follows:-

“(1) In this Ordinance, unless the context otherwise requires-

“Owner ”includes the person for the time being receiving the rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would receive the same if such premises were let to a tenant;”

There is express assertion by the Mayor before this Court that the Petitioner does not come within the rubric of an owner. Nor is there material before him that the Petitioner is the occupier. No doubt the Petitioner may be the current title holder of the property. But that has to be established before the statutory functionary namely the Municipal Council because the Municipal Council is statutorily enjoined to make available the assessment register only to *an owner or occupier*. There was no automatic right for all and sundry to have access to the full information. By confining the right of inspection to *an owner or an occupier* there is a deliberate intention on the part of the legislature to keep the assessment register out of public domain.

So it behoves the Petitioner to make out to the Municipal Council that he is *the owner or occupier* in the first instance. If there is a particular manner and form in which this information has to be furnished to the Council such as a prescribed form, the Petitioner must proceed to do so and have her name entered as the owner before he claims a right under the provisions of the Municipal Council Ordinance to inspect relevant registers maintained at the Council. Without having indisputably established her ownership before the Council, the Petitioner cannot put forward title deeds before this Court to make a finding of ownership which task is beyond the pale of competence of this Court in judicial review proceedings.

In a similar vein this Court has expressed this principle in several of its judicial precedents-vide *Thajudeen v. Sri Lanka Tea Board & another*¹, *Mohamed Shafie Raheem & another v. Dayananda Dissanayake Commissioner General of Elections*

¹1982(2) Sri.LR 472

*& Others*², *W.M. Karunawathie & 2 others v. Arachchi Hamilage Premawathie & 5 others of Mahaweli Authority of Sri Lanka*³ and *M.B.N. Peiris nee Perera v. Wattala Pradeshya Sabha*⁴.

So it is my view that the Petitioner has not made out a right which inheres in him to demand a duty of the Municipal Council.

So this Court has to dismiss this application which is quite misconceived in the absence of a right inherent to the Petitioner.

This Court is now left with the alternative argument of the Petitioner based on Section 74 of the Evidence Ordinance that sets out an exhaustive list of what would be public documents in the country.

I have held that the assessment book in which the annual value of a house, building, land or tenement shall be entered is not a public document in view of the deliberate intention of the legislature to keep it out of public domain and though public notice of where it could be inspected has to be given by the Council, the inspection itself is not open to all and sundry but only to the owner or occupier of the said habitat.

On the basis of my above holding it is my view that Section 74 of the Evidence Ordinance cannot invest the assessment book with the character of a public document.

In the circumstances this application for judicial review is refused.

JUDGE OF THE COURT OF APPEAL

² CA Writ No. 126/2011 (decided on 12.05.2011)

³ CA Writ Application No. 452/2008 decided on 06.03.2013 (Justice Anil Gooneratne J)

⁴ CA Writ No. 546/2011 (decided on 06.06.2013 (Justice Sriskandarajah J)