

1963

Present : Weerasooriya, S.P.J.

S. I. GUNASEKERA, Petitioner, and G. D. J. WIJESINGHE,
Respondent

*S. C. 191 of 1962—Application for a Writ of Quo Warranto on
Mr. G. D. J. Wijesinghe, Member of Peliyagoda Urban Council*

*Local Authorities Elections Ordinance (Cap. 262)—Section 8 (b)—Meaning of word
“resident”—Quo warranto.*

A man's place of business is not *per se* his residence also for the purpose of conferring on him the residential qualification required under section 8 (b) of the Local Authorities Elections Ordinance for membership of a ward.

APPPLICATION for a writ of Quo Warranto to have the election of the respondent as member for Ward No. 1 of the Urban Council of Peliyagoda declared null and void.

F. A. de Silva, for the petitioner.

Prins Gunasekera, with *M. T. M. Sivardeen*, for the Respondent.

Cur. adv. vult.

March 5, 1963. WEERASOORIYA, S.P.J.—

This is an application for a writ of Quo Warranto to have the election of the respondent as member for Ward No. 1 of the Urban Council of Peliyagoda at the poll held on the 13th January, 1962, declared null and void. Prior to the respondent's election as such he had unsuccessfully contested the seat for Ward No. 4 of the Wattala-Mabole Urban Council at the poll held on the 6th January, 1962. Both the Wattala-Mabole Urban Council and the Peliyagoda Urban Council electoral areas are within the Parliamentary Electoral District No. 5 (Wattala).

Section 8 of the Local Authorities Elections Ordinance (Cap. 262) sets out the qualifications which a person who is not disqualified under section 9 must possess in seeking election as a member for any ward of an electoral area. It is common ground that the respondent is not a person who is disqualified under section 9, and that the date on which the respondent should have possessed the qualifications stipulated in paragraphs (a) and (b) of section 8 is the 24th June, 1959. It is also common ground that on that date he possessed the qualification under paragraph (a) of section 8. The question in issue is whether on that date he possessed the qualification under paragraph (b) of that section for election as a member for Ward No. 1 of the Urban Council of Peliyagoda. In terms of paragraph (b), in order to be qualified for election as a member for Ward No. 1, it was essential that he should have been, on the 24th

June, 1959, resident in that or any other ward of the electoral area of the Urban Council of Peliyagoda. The petitioner's case is that the respondent was not so resident.

The respondent admits that on the 24th June, 1959, he had a residence at No. 116/5, Telangapatha Road, in Ward No. 4 of the Wattala-Mabole Urban Council area, where also his wife, children and servants resided. It was by virtue of his residence there that he was qualified for election as a member for Ward No. 4 of the Wattala-Mabole Urban Council, at which election he was, as stated earlier, unsuccessful. According to his affidavit filed on the 5th July, 1962, he commenced the business of a timber depot at No. 985, Kandy Road (which is within the Peliyagoda Urban Council electoral area) in 1942, and since then he has been residing there and also at No. 116/5, Telangapatha Road. He described No. 985, Kandy Road, as his "business cum residential address".

That the respondent carried on business at No. 985, Kandy Road, from 1942 up to about 1948 or 1949 is not disputed. Thereafter, the petitioner states, the respondent gave up the business and left the place. The respondent's position is that he carried on the timber business on a large scale at No. 985, Kandy Road, up to 1952 when his business dwindled to one of very small proportions. But even after 1952, and up to the present time, he continued to carry on the business in the same premises where he also has an office room. According to the petitioner, after the respondent had ceased to carry on business at 985, Kandy Road, the timber depot was converted into five tenements which were given assessments numbers 985-989, that at a later stage these tenements were demolished and replaced by a garage bearing the assessment number 990 and that as a result of these changes premises bearing No. 985 no longer exist.

Even if it is conceded that the respondent has, since 1952, been carrying on the timber business ("on a very small scale", as stated by him) at premises No. 985, the main question is whether he was "resident" there within the meaning of that word in section 8 (b) of the Local Authorities Elections Ordinance. No definition of "resident" is to be found in that Ordinance. "Residence", in its ordinary sense, is synonymous with dwelling place, abode or home, but not with a place of business. In *Fernando v. Grero*¹, which counsel for the respondent relied on, it was held that a place where a medical man had his dispensary, in which was also a sleeping apartment where he spent three or four nights each week, was as much his residence as the place where his family lived, and he too lived on the other days in the week. That case does not, however, help the respondent very much as the question whether the dispensary constituted a residence had to be decided with reference to section 2 (2) (a) of the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, which provides that "a person shall be deemed to reside in, or to be a resident of, any place, if he has, and from time to time uses, a sleeping apartment in any dwelling house therein".

¹(1938) 40 N. L. R. 275.

It is also to be noted that in the case just referred to, as the dispensary had a sleeping apartment which was regularly occupied for three or four nights each week, the question whether a place of business *per se* constituted a residence did not arise for decision there. But in an English case, where the facts were somewhat similar, in that a person carried on a business at certain premises and regularly lived for three or four days each week in a part of the premises which had been specially fitted for his residence, it was held that his living there, being entirely subservient to the purposes of his business, and that alone, he must be considered as not having dwelt there and that his dwelling place was where his wife, family and servants lived and where he too lived when he was not at his place of business—*Kerr v. Haynes*¹. This decision was followed in the local case of *Mendis v. Perera*², where the question that arose was the meaning of the word “resides” in section 9 of the Civil Procedure Code.

That a person's place of business, as such, is not his place of abode or residence was held in *The Queen v. Hammond*³. There are, on the other hand, cases which have taken the view that the expression residence, in the absence of a *technical* meaning, may be construed as including a place of business—see *The King v. Braithwaite and others*⁴ and the authorities discussed there. But such a construction was held to be an exceptional one and was adopted in that case on a consideration of the purpose of the particular Statute in which the word occurred. I am not prepared to regard the respondent as resident at No. 985, Kandy Road, merely on the basis that he has a business there. No submission to that effect was made by learned counsel for the respondent, and, in any event, there is nothing in the Local Authorities Elections Ordinance which appears to justify a construction that a man's place of business is *per se* his residence also.

As for the contention that No. 985, Kandy Road, in addition to being the place where the respondent has his timber business, is also his residence, I have to consider what material has been placed before the Court in support of it. The burden is on the respondent to prove that he was resident at No. 985, Kandy Road, on the material date. One feature of this case has been the multitude of affidavits filed by both parties. For the respondent there are affidavits from the chairman and a member of the Peliyagoda Urban Council, a retired village headman, an ayurvedic physician and a school teacher, among others, stating that the respondent has been residing at No. 985, Kandy Road, while the very opposite is asserted in the affidavits from persons of equal standing which have been filed by the petitioner. In this welter of contradiction I hesitate to act on any of these affidavits, unsupported as they are by other material.

No. 985, Kandy Road, is said to be only a little over one mile from the respondent's admitted residence at No. 116/5, Telangapatha Road. Apart from the circumstance that the business carried on by the respondent at No. 985, Kandy Road, has been on a very small scale since 1952, it is

¹ (1860) 29 L. J. Q. B. 70.

² (1909) 13 N. L. R. 41.

³ (1852) 17 Q. B. 772.

⁴ (1918) 2 K. B. 319.

difficult to understand why he found it necessary to have a separate residence there in such close proximity to No. 116/5, Telangapatha Road. This difficulty the respondent sought to meet in an affidavit dated the 6th September, 1962, wherein he explained that his house at No. 116/5, Telangapatha Road, is a four-roomed one, that his wife and children lived there, and as he was also having a few boarders there in order to supplement his income, he and one of his school going sons went to live at No. 985, Kandy Road. The names of three of the boarders appear in the extract marked F from the electoral list of Ward No. 4 of the Wattala-Mabole Urban Council for the year 1960 showing the persons entitled to vote in that ward and residing at No. 116/5, Telangapatha Road. There is no document of a similar nature in respect of the year 1959. Apart from that, the position taken up by the respondent in his subsequent affidavit seems to be different from that stated in the affidavit filed by him on the 5th July, 1962, according to which in 1959 he was residing at No. 985, Kandy Road, "as well as No. 116/5, Telangapatha Road". Even if in 1960 the respondent was, for the reasons given by him, compelled to reside exclusively at No. 985, Kandy Road, the explanation does not appear to hold good for the period prior to 1960.

In my opinion the respondent has failed to prove that on the 24th June, 1959, he was resident at No. 985, Kandy Road. In the result I hold that he was disqualified from seeking election as a member for Ward No. 1 of the Urban Council of Peliyagoda. His election is, therefore, declared null and void. The respondent will pay the petitioner's costs of these proceedings, which I fix at Rs. 157.50, exclusive of the costs of the hearing on the 24th August, 1962, which the respondent has already been ordered to pay.

Application allowed.
