1925

KENYA

162/12/3

C.O.
8253
20 FEB 25

[GOV]ERNOR CORYNDON. CONF 5

Date
10th January 1925.

Circulation:—
Mr. Bushe
Mr. Bottomley
Mr.
U.S. of S.
Mr Strachey

Perm^t U.S. of S.
Parl^y U.S. of S.
Secretary of State.

NAIROBI (RATING OF UNIMPROVED SITE VALUE) AMENDMENT ORDINANCE.

Trs further Statement of Objects and Reasons by Attorney General and copy of communications from legal advisers of Nairobi Corporation. Trusts S. of S. will be satisfied that amending Order is essential.

Previous Paper

H of C 7771

MINUTES

(See also 8480 : & minute & action on 9042)

Minute withdrawn after discussion with Mr Bushe

HVR

11/3/25

H.B.

12/3

[illegible]

[illegible]

12. 3. 25

See Sub.

8480

Subsequent Paper

O.A.G. 8480

(1133) Wt. 17813/32 Gp. 140 50000 12-24 W & S Ltd.

This report clearly makes out the general case for the Amending Ordinance, and shows that a drastic revision of the law was necessary in order to enable the Municipality to get direct at the landowner ultimately liable in any case, and not merely at the tenant, who pays subject to recovery from the landlord.

But the report does not deal with the two specific complaints of the Indians in 60924, viz.,

which amends Section 15 of the Principal Ordinance.

(a) that Section 3(c) of the Amending Ordinance gives power to levy rates retrospectively for any period.

The O.A.G. explains, however, in the telegram in 8460 that the amendment merely allows the rate to be fixed during the year to which it is applicable, arrears of rate being a charge on the land under Section 26 of the Principal Ordinance. There appears no doubt as to the correctness of this interpretation of the amendment when it is read with Section 15 of the Principal Ordinance, which empowers the Council "to impose a rate or rates on the unimproved value of land in or for each and every year".

of Section 34 of Principal Ordinance.

(b) That under Section 14 owners have no locus standi to appear in Court at all under any circumstances, and presumably even payment by mistake cannot be pleaded.

The O.A.G. has not yet furnished any observations on this point, which was discussed in the minutes on 332/25. The matter has two aspects.

(1) The case of the owner of land or property actually chargeable with payment of the rate in respect of which it has been attached.

While it is true that such an owner is

debarred from appearing by the words "not being the person liable, etc." in Section 14, it would appear that under Section 9, he has an opportunity of protesting in the period of 30 days between the date of attachment and sale, and in cases in which the Court is satisfied, it is empowered to release the land or property.

+ New Section of Principal Ordinance.

(ii) The owner who is not liable, (e.g. the person whose land or property has been attached in error) has, on the other hand, a clear right to be heard under Section 14.

If the above interpretations are correct and are not upset by any decisions of the Courts, the complaints as regards Section 14 seem to fall to the ground. It is, however, a question whether it is really wise to provide as in Subsection 4 of Section 14 that no appeal shall lie in the Magistrate's Court.

The embargo against taking action under the Ordinance was lifted in the telegram on 1175/25, and the Municipality are actually taking proceedings under the Amending Law. There is no limit in the letters patent or royal instructions to the time in which the Ordinance can be disallowed. There is, therefore, no hurry as regards either sanction or disallowance, and any further discussion with the Colonial Government can be by despatch.

The Secret despatch on 42178/24 suggested reconsideration of the whole question of the method of assessment, i.e., by adopting the more usual assessment upon the annual value of the land or property. No reply on this point has been received from the Colonial Government, but unless further developments should necessitate the matter being again raised, I assume that it may be allowed to drop.

Subject to any action which may be thought necessary

necessary as regards the question of appeals mentioned at * above.

? Acknowledge this and 8480. Note concurring in interpretation placed on Section 3(c), and as regards Section 14 say that the Secretary of State is advised that the interpretation is as at (i) and (ii). Ask whether the O.A.G.'s legal advisers concur in these interpretations. Say that in that case, and in the absence of any decisions to the contrary of the courts, the Secretary of State will not require any amendment of the law as it now stands.

KENYA.

No. 6.

CONFIDENTIAL.

C.O. 8253 20 FEB 25

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

10th January, 1925.

Sir,

With reference to Mr. Thomas' Confidential despatch of November 6th last, relating to the Nairobi (Rating of Unimproved Site Value) Amendment Ordinance, 1924, and to my telegram of the 7th instant, I have the honour to transmit a further Statement of Objects and Reasons prepared by the Attorney General, and a copy of the communications referred to therein from Messrs. Ralston and Kaplan, the legal advisers of the Nairobi Corporation.

2. I trust that these explanations of the difficulties in detail experienced in the administration of the principal Ordinance will satisfy you that the provisions of the Amending Ordinance of 1924 are absolutely essential.

3. Up to the end of 1924 the total amount of tax due from Indians was £10,156 - see enclosure 2 to the Town Clerk's memorandum forwarded with my Confidential despatch No.182 of July 23rd last. The Corporation's Estimates for 1925 are now under consideration by Government, and when they are approved, a further sum of not less than £4,133 will at once become due from Indian rate-payers.

I have the honour to be,
Sir,
Your most obedient, humble servant,

R. T. Coryndon

GOVERNOR.

RIGHT HONOURABLE
LIEUTENANT COLONEL
L. C. M. S. AMERY, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S. W.,

INCLOSURE
Kenya Conf.
in Despatch No. 6 of 10.1.1925

THE NAIROBI (RATING OF UNIMPROVED SITE VALUE) (AMENDMENT) ORDINANCE, 1924. 166

Further Statement of Objects and Reasons.

In view of the Secretary of State's despatch (Kenya Confidential of the 6th November, 1924,) it seems desirable to expound the Statement of Objects and Reasons forwarded with this Ordinance.

I regret that the original Statement was not fuller but the Bill was drafted, introduced into Council and considered by a Special Committee of Council presided over by the Colonial Secretary during my absence on leave and the procedure in Council after my return was purely formal.

The difficulties which have attended attempts to put into effect the recovery provisions of the 1921 Ordinance are fully set out in notes made by Mr.L.Kaplan of the firm of Solicitors who are the Council's legal advisers, copy of which is attached.

The Bill was slightly modified in accordance with the recommendations of the Special Committee of the Legislative Council. (Copy of Report forwarded with the Ordinance). From this Report it will be seen that the Eastern Africa Indian National Congress brought their views before the Committee.

The main object of the Ordinance is to provide for direct action against the property itself. Under the 1921 Ordinance no action could be taken against this until all remedies against the debtor's movable estate had been exhausted. In the condition of affairs which exists here it is frequently impossible to show that this is the case.

As a result of this state of affairs the Council is practically rendered incapable of commencing proceedings against

against the land and this makes it impossible to enforce any proceedings in default of payment at all.

The original draft of the Bill provided that the first remedy should be against the land itself. On the recommendation of the Committee however Section 9 was redrafted in its present form providing for the three alternative remedies against the land itself, any moveable property on the land itself and any moveables of the debtor wheresoever found.

As stated in the Secretary of State's confidential despatch of 6th November, 1924, this amending Ordinance confers no new power upon the Municipal Council but merely allows the Council to exercise the powers provided by the principal Ordinance in any order as circumstances may render desirable.

It is highly probable that the realisation of this that the difficulty of identification of persons and moveable property will no longer be sufficient indefinitely to delay proceedings, and that the land may be proceeded against at once will result in a prompt payment of all rates due and that many proceedings under the Ordinance will not be necessary.

The present state of affairs is that whilst one community of the inhabitants is paying rates under the existing law, the other has successfully taken advantage of loop holes in the law to avoid payment. There is always the danger that this success may lead to a desire to imitate the successful tactics. In the meantime the expenses of administration of the Municipality continue and the Council is without its income or the interest thereon.

It seems therefore desirable, now that this amending

Ordinance

Ordinance, under which there is a hope that the Council's difficulties may be ended, has proceeded so far, that it should be allowed to operate until we know whether or not it successfully carries out its intentions without undue hardship to rate payers.

Nairobi,

3rd January, 1928.

ATTORNEY-GENERAL.

Coulston and Kaplan.

Bowe Buildings,
Government Road,
Nairobi.

169

2nd January, 1925.

The Honourable
The Attorney General,
N a i r o b i.

Sir,

Re: Unimproved Site Values Ordinance No.19 of 1924.

You are doubtless aware that we have applied to the Magistrate to carry out the provisions of the above Ordinance against certain debtors who refuse to pay outstanding site value rates. We have been informed that the Colonial Office view with a certain amount of alarm the enabling provisions of the Ordinance and there is some suggestion that as a consequence the Ordinance or the enabling portions of it may be disallowed. At the outset we must impress upon you that the disallowance of the Ordinance will prove disastrous to the Municipality and will so undermine the prestige and dignity of the Corporation that the collection of its rates and the enforcement of its by-laws will become almost impossible. We make the following observations in connection with the original Ordinance and the subsequent amendments which we hope will make it perfectly clear that Ordinance 19 of 1924 is perfectly fair and just under the circumstances and that no provisions other than those granted in the Ordinance would have been effectual:-

1. In 1921 the Nairobi Corporation saw fit to impose a tax on the unimproved site values of land within its jurisdiction for the purpose of providing money to carry on its works. An Ordinance No.19 of 1921 was assented to in His Majesty's name on the 22nd February, 1921. Section 15 of that Ordinance empowered the Council to impose the rate and Sections 28 and 29 of that Ordinance provided the procedure for the recovery of the rates.

2. The rates were duly imposed and in 1921 were paid by the

parties liable therefor. In 1922 the Indian ratepayers for some reason best known to themselves, declined to pay the rates. It must be here remembered that in 1922 and subsequently the Indian Community always had the right to nominate 4 representatives on the Council.

3. The Corporation attempted to recover the rates due to them under Section 29 of the Ordinance but found in practice that they met with great difficulty. For instance, a warrant of attachment issued against the personal property of [illegible] proved to be the property of his brother or his sister-in-law or his father or some other person or the property was subject to some charge or incumbrances or it was even feasible that no articles whatever were found in the premises liable for the tax. It must again be remembered that there was and is now a concerted movement on the part of the Indian ratepayers to avoid payment of these rates.

4. Only after the provisions of Section 29 failed could the provisions of Section 27 of the Ordinance be enforced. It must be fairly obvious that the tax being on the land should first be recovered from the land and clearly paragraph 27 should have preceded paragraph 29. You will observe that the new Ordinance provides a remedy against the land first and the goods afterwards. It may be argued that Section 29 gives the Corporation sufficient powers but in dealing with a Community who not only change their places of business but also their names from week to week the procedure of attaching moveable property becomes almost impossible. This impossibility was recognised by the Legislature when they passed an amending Ordinance No 30 of 1922 giving the Corporation the additional power of recovering rates under the Summary Jurisdiction Ordinance, thus rendering a defaulting ratepayer liable to an Ordinance quasi criminal in nature. No action was taken under Ordinance No 30 of 1922 because the Council felt that there was no certainty by any means of recovering the rates by putting people in jail particularly when the objection to pay the

rates

rates was contested and amounted to passive resistance, and was political in character.

5. The Town Clerk finding himself in difficulty over the above mentioned Ordinance instituted actions against various defaulting ratepayers under the provisions of the Civil Procedure Code. We attach hereto a copy of the defences taken on behalf of the debtors.

6. The fourth defence succeeded and the actions were thrown out involving the Corporation in considerable expense.

7. You will observe that one of the defences is that the rates sought to be recovered are now barred by limitation, since the action was fought a considerable time has elapsed and that defence, whether it has any merits or not, is now destroyed by the terms of the new Ordinance.

8. We were then instructed to advise the Municipality what steps to take for the recovery of their rates. We examined the Ordinance in conjunction with the Solicitor General and the then acting Crown Counsel Mr. Law and found that there were numerous deficiencies which should be rectified and the result is not only a new remedy for the recovery of the rate but additions and amendments of Ordinance 19 of 1921 which appeared to be vitally necessary. For instance, in paragraph 2 of Ordinance 19 of 1921 the definition of registered owner is not given and Section 15 of the Ordinance does not provide by whom the tax is payable. We could not therefore substantiate an action under Section 38 of the Ordinance until and unless we could prove who was liable for the tax. The amending Ordinance now provides that the registered owner is liable for the tax; nor did that section provide how the tax was to be assessed. These omissions alone, in our opinion, would have rendered abortive any action under the provisions of Ordinance 19 of 1921.

9. Another very serious objection to the provisions of paragraph 38 (read with the remaining

Sections

sections of the Ordinance) was that we were always obliged to disclose the name of the person liable for the tax and his partner or partners; in practice this is extremely difficult and in fact the person named in the rate book as the one liable for the rate was either deceased, had left the country or was in fact not the owner of the premises assessed or had several undisclosed partners. Since the making of the rate book a large number of the properties have changed hands.

10. Section 5 of the amending Ordinance therefore became necessary as also Section 6. Section 36 of the Ordinance (19 of 1921) appeared to be unintelligible and Section 8 of the amending Ordinance was therefore introduced.

11. We felt on further serious consideration that the tax was intended to be a tax on the land and that the land should be the first asset attachable. We advised the Council accordingly that the existing Ordinance rather placed the cart before the horse and that the remedy of attaching movables was only secondary to the main and chief remedy, namely the attachment of the land. The present position has proved our contention. We have at the moment wide attachment under the amending Ordinance and the debtors find that they have no defence except to attack the Ordinance as being ultra vires. We venture to state that all the other defences taken by the debtors in the previous action are not available to them under the terms of the present Ordinance.

12. There is, however, one additional right which was not given under the Ordinance 19 of 1921, namely that any person whose property is attached (not being the owner) may prove to the Court that the property is not subject to attachment, i.e. that the property is not the property of the person named in the rate book. Section 28 is in fact broader than the terms of the new Ordinance, obviously, therefore, the remedies provided by Section 9 of the amending Ordinance are intended to get at the

owner

owner of property who unwarrantably and vexatiously declines to pay his rates and we do feel any interference with the amending Ordinance will not only cause the Corporation a considerable loss of prestige but what is more will make it practically impossible to collect the rates which are now due for 1922, 1923 and 1924. The Indian objection now is that they were not consulted in the passing of the original Ordinance or any of its amendments because they were not represented on the Council. This representation has always been open to them and we understand they decline to accept it.

13. In addition to our opinion in the matter we sought that of the legal members of the Legislative Council who, as practising lawyers, saw the difficulties of recovering under the provisions of Sections 28 and 29 and who consequently assisted the passing of the amending Ordinance as it now stands; in addition to which the large amount outstanding for these rates is seriously embarrassing the Corporation financially and under the provisions of the original Ordinance a great deal of time would be wasted by the defaulting debtor. The present legislation is intended to give the Corporation such rights as will enable them to collect the rates without delay. To take a case in point there is one debtor who owes the Corporation something like £3,000; his movable assets consist only of office and household furniture. It was hardly be seriously argued that the Corporation should dispose of the movables assets valued at approximately £100 before proceeding to attach the property or properties liable for the rate.

14. We do seriously urge that the provisions of the Amending Ordinance should not be interfered with, it is extremely difficult for the Colonial Office and its advisers to form an opinion on the difficulties entailed in carrying out the provisions of Sections 28 and 29 of the original Ordinance without knowing the difficulties occasioned in practice in this

I am

form of complying with such sections, particularly taking into consideration, as previously stated, that this movement is intended to harass the Corporation and Government owing to some alleged political grievances.

15. Furthermore it must be always borne in mind that the amending Ordinance is intended principally to recover arrears. For three years the Indian Community had received all the advantages given by a progressive Corporation without paying towards the cost of the necessary services.

I have the honour to be,

Sir,

Your obedient servants,

/ sd/- Alston and Kaplan.

IN HIS MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI.

Civil Case No.86 of 1933.

J.A.Watson as Town Clerk.....Plaintiff

versus

Valji Kirji & Son.....Defendant.

WRITTEN STATEMENT.

The Defendants above named state as follows:-

1. That the Plaintiff is not entitled to bring this action.

2. That the provisions of the Civil Procedure Code have not been complied with in that the Defendants have not been properly described, and the plaint must therefore be rejected.

3. That the Defendants are not the owners of some of the Plots set out in the schedule attached to the Plaint and are not liable for any rates imposed in respect of same.

4. That the provisions of section 8 of the Nairobi (Rating of Unimproved Site Values) Amendment Ordinance 1932 have not been complied with, and this suit has been improperly brought and cannot be entertained by this Honourable Court in the alternative that this suit barred by limitation.

5. Without prejudice to the foregoing that no notice was given of the making of any rate for year 1932, as required by section 18 of the Nairobi (Rating of Unimproved Site Values) Ordinance, 1931, and that the provisions of section 18 have not been complied with, and that therefore the rates imposed are not valid or recoverable.

6. That the rate, the subject of the present action, were improperly imposed and are invalid in that they were made retrospective.

7. Without prejudice to any of the above defence the claim for rates made for purports to be made by the Plaintiff under an Ordinance which was passed without the authority of Parliament or of any authority competent to enact such an Ordinance in the Colony of Kenya.

8. That the Defendants deny the accuracy of the amount of the Rates as set out in the schedule attached to the Plaint.

9. That the rates sued for are not recoverable as barred by limitation.

WHEREFORE, the Defendants pray that this suit be dismissed with costs.

[illegible]

That is stated above is true to the best of my knowledge information and belief.

Dated this day of

SWORN BY.