PODIMAHATMAYA

v.

THE LAND REFORM COMMISSION AND ANOTHER

COURT OF APPEAL,
PALAKIDNAR J., AND W. N. D PERERA, J ,

C A 716/81,
MAY 29 and 30, 1989

Mandamus – *Land Reform Commission – Vesting in L R C and Divesting – Test of reasonableness*

The ownership of Lot 4 of a field belonging to the petitioner was vested in L R.C and divested in favour of the petitioner twice Finally an order to re-vest the land again in the L R C by revoking the determination in favour of the petitioner was made.

Held :

The administrative authority cannot act in a manner prejudicial to a person who has a right under the statute to retain the minimum fifty acres under the law The Court can interfere where there is manifest unreasonableness in an administrative act The test is whether the administrative authority has acted within the rules of reason and justice.The conduct of the administrative authority must be legal and regular as one correlates the acts complained about to the power given under statute It is an implied requirement that there should be a reasonable and conclusive decision *Mandamus* will issue

APPLICATION for *certiorari* and *mandamus*

H. L. de Silva, P C. with *Faiz Musthapha,* P.C. and *A. de Silva* for petitioner
H. M. P. Herath for 1st respondent.
H W. Jayawardena, Q C. with *L C. Seneveratne,* P.C. with *H. Amarakoon* for 2nd respondent.

Cur. adv. vult.

June 29, 1989

PALAKIDNAR, J.

Podimahathmaya was the owner of one hundred and ten acres of agricultural land when the Land Reform Law came into force on 26 8.72. He was therefore required by Law No. 1 of 1972 to declare his properties under Section 18(1). He made a disclosure of all his properties duly. Under a statutory determination made by the 1st Respondent under Section 19(1) of the said Act, Podimahathmaya (referred to as Petitioner hereinafter) was allowed to retain fifty acres of his property. This order briefed as P3 dated 23.1.76 did not include lot 4 in final plan 154 briefed as P_1a owned by the petitioner known as Polwattegodahena (hereinafter referred to as Lot 4) in extent seven acres and 44 roods.

Order P3 was revoked by P4 dated 26.9.80 to include lot 4 as a plot of land that could be retained by the petitioner.

This order P4 had the legal effect of divesting Lot 4 from the Land Reform Commissioner (referred hitherto as L.R.C.) and making the Petitioner the owner of the said lot.

P4 was on a "reconsideration" revoked and lot 4 was again revested in L.R.C. by order dated 31.10.80 marked P5

On 12.11.80 a further order emanated from the L.R C , divesting lot 4 and allowing the petitioner to retain lot 4 This order is marked P6.

The matter curiously does not rest there. The ownership of lot 4 has been considered and reconsidered by the administrative authority so far and was vested and divested in the Petitioner and L R.C. two times each. This slippery situation of titular possession did not reach any finality even by P6 but by letter P7 the L.R C. states that it has changed its mind and intends revoking the decision in P6

At this stage this Court had been invited to sort out this tangle and review the reasonableness of the L.R.C.'s decision in P7 and prevent the order in P6 in regard to Lot 4 being revoked by a statutory determination to be made pursuant to the communication marked P7.

Samarasinghe the second respondent is resisting this move and his Counsel strongly objects to the issue of a writ stating that this Court should not exercise its powers to settle a private dispute between the Petitioner and Samarasinghe. Samarasinghe has built a house in Lot 4 and has a stake in the outcome of this dispute between the Petitioner and the L.R.C. The L.R.C has stated to this Court that it has been prompted to revoke order P6 and refuse to allow the petitioner to retain lot 4 because there is a dispute regarding a house. One cannot read into this reasoning a disposition to be helpful in resolving this dispute. The second respondent Samarasinghe does not figure in the statutory declaration or statutory determination of the petitioner and the L R C. respectively. However it is interesting to note that orders P3 to P6 have swung pendulum wise between vesting and divesting of lot 4 by the L.R.C.

This motion to and from has been prompted by weightage of influence used by the disputants and caused it to move either way That there was merit in the Petitioner's request is supported by two orders permitting him to retain lot 4. That there was influence brought to bear is seen by two orders revoking such decision.

This is an unreasonable state of affairs when one considers that one losses one's properietory interest under legal compulsion of public policy and one is not able to salvage what he could legally retain in the

circumstances. The administrative authority cannot act in a manner prejudicial to a person who has a right under the statute to retain his minimum fifty acres under the law.

It was strenuously contended by the Counsel for the second respondent on the authority of two decisions of the Supreme Court reported in 39 N.L.R. at page 186 and 42 N.L.R. 251 where the Court refused to allow the issue of a prerogative writ of *mandamus* to settle a dispute among two contending parties. We are in full agreement with the principle stated in those cases, but on the more basic circumstance of the interference of this Court by a writ, one must examine whether there was reasonableness. This Court can interfere where there is manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice. The conduct of the administrative authority must be legal and regular as one correlates the acts complained about to the powers given under the statute. It is an implied requirement that there should be a reasonable and conclusive decision taken by the L.R.C.

This dispute which the administrative authority refers to is a civil dispute concerning the title to the property involved, and can be properly settled in a civil court of competent jurisdiction. It would be no approach to a resolution of such a dispute by a purported order under P7.

We therefore made order issuing a writ of *mandamus* as prayed for in the petition directing the first respondent L.R.C. to implement its statutory determination of 12.11.80 contained in P6 and take further steps as required under the law to permit the petitioner to retain lot 4 as prayed for. The application for writ of *certiorari* does not arise in the circumstances as no statutory determination was made as purported to be done under P7. There was an order of this Court staying further steps in the matter. We hold that P6 was a correct statutory order as it stood as the time the application was filed in this Court and need not be reviewed by this court as it has been the outcome of several reconsiderations by the L.R.C. The resolution of the rights in any house can best be left to the civil court in the District Court of Ratnapura for a declaration of rights title and interest of the petitioner in regard to lot 4.

The application for a writ of *mandamus* is therefore allowed with costs fixed at Rs.1,050.

W. N. D. Perera, J. – I agree.