MANATUNGA
v.
BARONCHIHAMY

SUPREME COURT.
G. P. S. DE SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 124/94
C.A. APPEAL NO. 164/83
A.T. CASE NO.
FEBRUARY 06, 1995.

Agricultural Tribunal – Jurisdiction of Assistant Commissioner of Agrarian Services to hear appeal addressed to Agricultural Tribunal – Agricultural Lands Law, No. 42 of 1973, ss. 3(3), 3(4) – Agricultural Productivity Law, No. 2 of 1972, s. 30 – Agrarian Services Act, No. 58 of 1979, ss. 5(3) & (4), 67(1) & (2) (f) – Complaint of eviction by tenant-cultivator – Waiver and acquiescence.

On 5.11.79 one Pattisingho made a complaint of eviction from a paddy field of which he was tenant-cultivator on a cyclostyled form addressed to the Chairman, Agricultural Tribunal which he obtained from the office of the Assistant Commissioner of Agrarian Services.

The alleged eviction occurred on 10.8.79 when the Agricultural Lands Law, No. 42 of 1973 was in force. Section 3(3) of this Law enabled a cultivator to make a complaint of eviction to the Agricultural Tribunal. Such Agricultural Tribunals were appointed under s. 30 of the Agricultural Productivity Law, No. 2 of 1972. Under s. 3(3) of the Agricultural Lands Law and the complaint had to be made within a year. Before Pattisingho made his complaint, the Agrarian Services Act, No. 58 of 1979 was passed by which s.67(1) the Agricultural Productivity Law and Agricultural Lands Law were repealed. Thus Agricultural Tribunals were not in existence when Pattisingho made his complaint. Under the Agrarian Services Act, No. 58 of 1979, s.5(3), a complaint of eviction could be made and that within one year of the eviction provided however that where the eviction had occurred within two years prior to the date of the commencement of the Act, the tenant cultivator could make the complaint within two years of the date of commencement of the Act.

Pattisingho's complaint was heard by the Assistant Commissioner of Agrarian Services who decided that Pattisingho was the tenant cultivator and had been evicted. An appeal was preferred and during the pendency of the appeal, Pattisingho died and his wife was substituted as the respondent.

Held:

Notwithstanding the commencement of the Agrarian Services Act, complaints addressed to the Assistant Commissioner were being accepted on old forms addressed to the Chairman, Agricultural Tribunal. By this the complaint did not become void. It was only an irregularity.

There was no prescribed form for making complaints. The complaint under s.5(3) could be made even orally.

The failure to object to the Assistant Commissioner entertaining the complaint amounts to waiver and acquiescence.

Cases referred to:

1. *Peiris v. The Commissioner of Inland Revenue* 65 NLR 457.
2. *Mac Foy v. Africa Company Ltd.* (1961) 3 All ER 1169, 1172.

APPEAL from judgment of the Court of Appeal.

J. W. Subasinghe, P.C. with *J. A. J. Udawatta* for appellant.
Rohan Sahabandu for respondent.

Cur. adv. vult.

February 21, 1995.
KULATUNGA, J.

The appellant who is the owner of a paddy land called Marakkalamulla, appealed to the Court of Appeal against an order of an Assistant Commissioner of Agrarian Services which decided that one Pattisingho (now dead) was the tenant cultivator of the said paddy land and that he had been evicted therefrom. Pattisingho died during the pendency of the appeal, whereupon his wife was substituted as the respondent.

Before the Court of Appeal, it was argued that the Asst. Commissioner had no jurisdiction to entertain the complaint of Pattisingho for the reason that it had been addressed to the Agricultural Tribunal which had ceased to exist as on the date of the said complaint. As such the complaint was a nullity; and that all the proceedings which were held on the basis of that complaint were bad in law. Hence, the impugned order should be set aside.

The Court of Appeal held that the Asst. Commissioner had jurisdiction to hear the complaint and dismissed the appeal. Special Leave to Appeal to this Court was granted on the question whether in the circumstances of this case, the Assistant Commissioner was without jurisdiction to hear the matter, inasmuch as the complaint had been addressed to the Agricultural Tribunal.

The alleged eviction occurred on 10.08.79 on which date the statute in force was the Agricultural Lands Law No. 42 of 1973. Section 3(3) of the Law enabled the cultivator to make a complaint of eviction to the Agricultural Tribunal within whose area the paddy land in dispute lies. Such Tribunals were appointed under s.30 of the Agricultural Productivity Law No. 2 of 1972. S.3(4) of the Agricultural Lands Law provides that a complaint shall be made within one year from the date of the eviction.

Before Pattisingho made the complaint, Parliament enacted the Agrarian Services Act, No. 58 of 1979 which came into effect on 25.09.79. Under s.5(3) of that Act, a complaint of eviction has to be made to the Commissioner of Agrarian Services. S.5(4) requires the complaint to be made within one year of the eviction provided that where the eviction, had occurred within two years prior to the date of the commencement of the Act, the tenant cultivator shall make the complaint within two years of the date of commencement of the Act.

Section 67(1) of Act No. 58 of 1979 repealed the Agricultural Productivity Law and the Agricultural Lands Law subject, however, to certain transitional provisions which *inter alia,* empower the Commissioner to continue and conclude proceedings which, on the date of commencement of the Act, were pending before an Agricultural Tribunal.

Pattisingho made his complaint on 05.11.79. The complaint has been made on a cyclostyled form PL/EV/1, which is addressed to the Chairman, Agricultural Tribunal, Hambantota. According to the date stamp on the complaint, it appears to have been submitted to the office of the Agricultural Productivity Committee, Hambantota. This shows that notwithstanding the commencement of Agrarian Services Act, which established a new authority and new machinery to decide

agrarian disputes, the old machinery was still being used; and that even complaints which had to be addressed to the Commissioner were being accepted on old forms addressed to the Chairman, Agricultural Tribunal.

The said complaint was inquired into by an Assistant Commissioner of Agrarian Services. The correspondence in the Assistant Commissioner's file shows that the matter had been treated as a proceeding which, on the date of commencement of the Act, had been pending before an Agricultural Tribunal. Accordingly, it was proceeded with by the Commissioner under s.5(3) of the Act, read with s.67(2)(f). Learned President's Counsel for the appellant rightly submitted that as the complaint had not been made to an Agricultural Tribunal which was legally functional, there was no proceeding pending before such a Tribunal, which could have been continued by the Commissioner in terms of the said provisions.

The Court of Appeal was of the opinion that had the complaint been made to the Commissioner, he was admittedly competent to decide it; and that on the authority of the decision in *Pieris v. The Commissioner of Inland Revenue* [1], the Commissioner had the jurisdiction to hear the dispute even though the complaint had been addressed to a non-existing Agricultural Tribunal. The Court cited the dicta of Sansoni, J. –

> "It is well settled law that an exercise of a power will be referable to a jurisdiction that confers validity upon it and not to a jurisdiction under which it would be nugatory".

In his written submissions, Counsel for the appellant submits that the above case is distinguishable as the Assistant Commissioner of Inland Revenue therein was empowered by an existing statute to act, but purported to act under a wrong section. In the instant case the Assistant Commissioner had no jurisdiction, authority or power to inquire into a complaint made to a non-existing tribunal.

Counsel argues that the complaint is a nullity; if so, all steps taken thereafter are nullities. He cited Lord Denning in *Mac Foy v. Africa Company Ltd* [2].

> "You cannot put something on nothing and expect it to stay there. It will collapse."

Learned Counsel for the respondent in his counter submissions submits that the making of a complaint to a non-existing tribunal is a mere irregularity and not a nullity. In support of this proposition, the attention of the Court is drawn to the fact that firstly, the complaint was made on a cyclostyled form addressed to the Agricultural Tribunal and supplied by the authorities. Secondly, no objection was taken at the inquiry before the Assistant Commissioner. Thirdly, the error, if any, was induced by the authorities who issued a wrong form to the cultivator. He argues that in these circumstances, and in view of the fact that the Commissioner was otherwise possessed of jurisdiction to hear the complaint, it is merely a question of irregularity of procedure which the parties are competent to waive; and that the defect is not fatal.

If the complaint to the wrong tribunal was a nullity and denuded the Assistant Commissioner of jurisdiction, then of course, the parties could not by consent have given him jurisdiction. But the question is whether the proceedings taken by the Assistant Commissioner are null and void. In discussing the so-called distinction between 'void' or 'voidable', Wade Administrative Law 6th Edt. p. 349 says:

> "Action which is *ultra vires* is unauthorised by law, outside jurisdiction, null and void, and of no legal effect."

At pp.353-353 he considers the necessary qualifications to this rule and concludes:

> " 'Void' is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the Court's willingness to grant relief in any particular situation".

I am of the view that the proceedings before the Assistant Commissioner did not become void by reason of the fact that the initial complaint had been made to a non-existing tribunal. That complaint was a mere irregularity. There is no prescribed form for making a complaint. It appears that the notification contemplated by

s.5(3) of the Act may even be made orally. The cyclostyled form which was issued by the authorities to the cultivator is one prepared for administrative convenience; the form itself was addressed to the Agricultural Tribunal. Hence, the failure of the appellant to object to the Assistant Commissioner entertaining the complaint amounts to waiver or acquiescence. Consequently, even the said irregularity was cured.

I hold that the proceedings had before the Assistant Commissioner were valid. Accordingly, I dismiss the appeal and affirm the judgment of the Court of Appeal. The respondent will be entitled to costs in a sum of Rs. 750/-.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.