

GUNARATNE (ALEXIS AUCTION ROOMS)

v.

ABEYSINGHE (URBAN DEVELOPMENT AUTHORITY)

SUPREME COURT.

ATUKORALE, J., TAMBIAH, J., AND L. H. DE ALWIS, J.

M.C. COLOMBO FORT 52489;

C.A. APPLICATION 518/84; S.C. 54/85.

FEBRUARY 18; MARCH 14, 24, 25 AND APRIL 29, 1988.

Landlord and tenant—Urban Development Project (Special Provisions) Act No. 2 of 1980, S. 2—State Lands (Recovery of Possession) Act No. 7 of 1979, S. 3.

Revision—Urban Development Projects (Special Provisions) Act No. 2 of 1980, Sections 3(a) and 4(1)—Removal of revisionary and writ jurisdiction of the Court of Appeal by these provisions.

Alexis Auction Rooms were in occupation of the premises in suit as tenants for about 35 years first under one Arneen and after acquisition on 29.05.1981, under the U.D.A. The Company (Alexis Auction Rooms) fell into arrears of rent and the U.D.A. served notice dated 10.10.83 under section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 on Gunaratne a Director of the Company to vacate the premises and hand them over on or before 25.10.1983 (i.e. in 15 days time). This was followed by the U.D.A. instituting proceedings on 24.01.84 (i.e. 106 days later) in the Magistrate's Court, against Gunaratne seeking his eviction. On 04.04.84 the Magistrate made order directing eviction on 18.04.84 two weeks' time having been allowed at the tenant's request. Gunaratne then applied to the Supreme Court and asked for a Writ of Certiorari to quash the order of the Magistrate's Court but this was refused as being out of time.

On 19.04.84 Gunaratne moved the Court of Appeal for revision of the Order of Magistrate's Court. This application was dismissed on 20.05.85. On the same day the U.D.A. took possession. Gunaratne appealed to the Supreme Court from the Order of the Court of Appeal.

Held—

- (1) The requirement of giving of notice under S. 3(1) of the State Lands (Recovery of Possession) Act to vacate and hand over possession is mandatory and must be complied with.
- (2) The stipulation of 30 days notice in S. 3(1) is for the benefit of the occupier and the authority may specify a date not less than 30 days or a longer period. The quit notice given in this case being only 15 days was defective in form but the tenant in fact had 106 days because ejection proceedings were filed only after 106 days and a further 2 weeks had been given at the tenant's request by the Magistrate. The requirement of 30 days notice in S. 3(1) must be treated as directory since there has been substantial compliance with it.
- (3) Section 7(1) of Act No. 2 of 1980 enables recourse to the provisions of Act No. 7 of 1979 in order to take possession of the land.

(4) The Court of Appeal could not have entertained the Revision application of the petitioner. The revisionary and writ jurisdiction of the Court of Appeal to grant reliefs in respect of the complaint of the petitioner have been removed by S. 3(a) and S. 4(1) of Act No. 2 of 1980.

APPEAL from an order of the Court of Appeal.

Dr. Colvin R. de Silva with H. W. Jayatissa Herath, G. O. Fonseka, Miss. W. R. J. Herath, Miss. Chamantha Weerakoon and Hilary Jayawardena for the appellants.

K. N. Choksy P.C. with N. Mahendran and Miss. I. R. Rajapakse for the respondent.

Cur. adv. vult.

May 19, 1988.

THAMBIAH, J.

This case has a protracted history.

Alexis Auction Rooms Limited, was in occupation of the premises No. 295, Galle Road, Colombo 3, as a tenant, for a period of about 35 years. The premises belonged to one Ameen of No. 64, Ward Place, Colombo.

The premises were acquired under the Land Acquisition Act by the Urban Development Authority (UDA) with effect from 29.5.81. The acquisition was made with a view to put up high rise buildings in terms of the Master Plan for the Colombo Metropolitan area development.

After the acquisition, Alexis Auction Rooms Limited was treated by the UDA as the tenant of the premises. The correspondence between the parties show that the Company offered to purchase the premises and develop it according to plans and specifications acceptable to the UDA and the latter was not agreeable; that the UDA called upon the Company to pay an enhanced rent of Rs. 5,000 per month as fixed by the Municipal Council, and that as at 31.7.82, the Company was in arrears of rent amounting to Rs. 70,000 for the period commencing from 29.5.81 to 31.8.82.

On 18.3.83, His Excellency the President made an order under S. 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 in relation to premises No. 295, Galle Road, Colombo 3. The said order was published in Government Gazette (Extraordinary) No. 237/11 dated 23rd March, 1983. S. 7 of the said Act No. 2 of 1980

makes provision for the appropriate authority to have recourse to the State Lands (Recovery of Possession) Act No. 7 of 1979 in order to obtain possession of the premises. The respondent abovenamed, purporting to act under the provisions of S.3 (1) of Act No. 7 of 1979, as amended, served a notice dated 10.10.83 on the appellant who is a Director of the Company to vacate and deliver vacant possession of the premises on or before 25.10.83. Thereafter, the respondent purporting to act under the said Act No. 7 of 1979, as amended, made an application on 10.1.84 in proceedings bearing No. 52489 of the Magistrate's Court, Fort, Colombo, and prayed for the ejection of the applicant from the said premises. Summons was served on the appellant and he was represented by a lawyer ; so was the UDA. After hearing submissions on 26.3.84 and 28.3.84, the learned Magistrate made order on 4.4.84 that the appellant be ejected from the premises forthwith. The appellant's lawyer thereupon informed the learned Magistrate that there were goods worth about 30 lakhs on the premises entrusted to the appellant for auction ; that it would take at least 2 weeks to hand back the items to the owners or to move them to another place. The lawyer for the UDA had no objection and thereupon the learned Magistrate made order that the writ of ejection should be operative after 18.4.84 and that the appellant should vacate the premises on or before 5 p.m. on 18.4.84.

Soon thereafter, the appellant made an application (S.C. 1/84 (Special)) on 9.4.84 to the Supreme Court and asked for a Writ of Certiorari to quash, inter alia, the order of the learned Magistrate directing that the appellant be ejected from the premises. The writ was sought on the ground that S.3(1) of Act No. 7 of 1979 required that the date to be specified in the notice should be a date not less than 30 days from the date of its issue, but, the appellant had been given only 15 days notice to quit; that S.5(2) required that the application for ejection be accompanied by a copy of the notice to quit, and that the respondent had failed to do so; that the failure of the respondent to comply with the mandatory requirement of 30 days notice and the failure to comply with S.5 (2) vitiated the entire Magistrate's Court proceedings and that the order of the learned Magistrate was ex-facie without jurisdiction. The Supreme Court on 17.4.84 made order refusing the application on the ground that the application was made under S.4 of Act No. 2 of 1980 which required the invocation of the Supreme Court's jurisdiction within one month of

the order made by the President under S. 2 of the Act. As this order was made on 23.3.83, the application was clearly out of time.

Thereupon, on 19.4.84, the appellant made an application in revision to the Court of Appeal to have the order of the learned Magistrate for ejection set aside. In the said application, the appellant averred, inter alia, that the statutory provisions of Act No. 7 of 1979 require that prior to an application for ejection, a due and valid notice to quit must be served; that the notice served failed to comply with the clear mandatory requirement of S.3(1) as it gave the appellant a period of only 15 days to quit; that the application for ejection made under S.5 was not accompanied by a due and valid notice, and hence the learned Magistrate had no jurisdiction to proceed with the application and has acted in excess of jurisdiction when he made the order for ejection. The same grounds were urged and the same reliefs were prayed for in the Writ Application that was dismissed. However, the statement in the appellant's pleading that he made an application under S.4, Act No. 2 of 1980 and that "Their Lordships stated, inter alia, that the application had been made to the wrong Court", is incorrect. Having filed this application the appellant also obtained an ex-parte Order from the Court of Appeal to stay writ until the final disposal of the application.

The Court of Appeal ultimately delivered its order on 20.5.85, and dismissed the application. Justice G.P.S. de Silva stated that "the object of giving one month's notice to quit is to enable the occupier of the premises to find alternative accommodation. In the present case that object was achieved; for, the petitioner had more than the required statutory period of 30 days notice. Thus though the quit notice was defective or irregular in form, yet I am satisfied that in the instant case it caused no prejudice to the substantial rights of the petitioner. In the circumstances, this is not a fit and proper case for the exercise of the extraordinary powers of revision vested in this Court".

The Court of Appeal, however, thought it unnecessary to decide two preliminary objections raised by learned Counsel for the respondent, namely, that it had no jurisdiction in respect of the subject matter of the application in view of section 3(a) and 4(1) and 6 of Act No. 2 of 1980, and that the appellant is precluded from maintaining the application as he had earlier unsuccessfully applied to the Supreme Court in Application No. 1/84 (Special) on the same grounds to obtain the same relief.

Mr. Choksy, P.C., informed us that he was not pursuing the 2nd objection which he had raised before the Court of Appeal.

On 20.5.85, soon after judgement was delivered by the Court of Appeal, the UDA took possession of premises No. 295. On 21.6.85, Alexis Auction Rooms Limited, filed an application in the Supreme Court under Article 126 and 12(1) of the Constitution. The Company's complaint was that the UDA had at no stage served a notice to quit under Act. No. 7 of 1979 on the Company which was in possession of the premises as tenant of the UDA and that the purported notice served on the appellant was bad in law and null and void, that the notice to quit ought to have been served on the Company and it should have been made the respondent in the Magistrate's Court proceedings for ejection; that any steps, proceedings and orders taken or made against the appellant did not bind the Company. The Company also complained that it had been unlawfully and forcibly ejected by the UDA from the premises on 20.5.85, soon after delivery of the judgement by the Court of Appeal. The Company prayed that the UDA be directed to vacate the premises and that it be restored to possession and it be paid compensation for wrongful ejection. The application was dismissed.

It is necessary to reproduce some of the provisions of the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended by Act No. 29 of 1983.

S. 3(1): When a competent authority is of opinion:—

- (a) that any land is State land; and
- (b) that any person is in unauthorised possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorised person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

(2) Every notice under sub-section (1) issued in respect of any State land is in this Act referred to as a "quit notice".

S.4 "Where a quit notice has been served or exhibited under S.3—

- (a) the person in possession or occupation of the land to whom such notice relates..... shall not be entitled to possess or occupy such land after the date specified in such notice or to object.....
- (b) the person in possession or occupation shall duly vacate such land and deliver vacant possession to the competent authority or person to whom he is required to do so by such notice.

S.5 (1) Where any person fails to comply with the provisions of S.4 (b) in respect of any quit notice issued.... any competent authority may make an application in Form B in the Schedule to the Magistrate's Court

- (a) setting forth the following matters—
 - (iii) that a quit notice was issued ... or exhibited.

(2) Every application shall be supported by an affidavit in Form C verifying the matters set out in such application and shall be accompanied by a copy of the quit notice.

(3) Every application supported by an affidavit and accompanied by a copy of the quit notice shall be referred to as an "application for ejectment".

It is common ground that the notice to quit dated 10.10.83 gave the petitioner a period of only 15 days to vacate the premises. Dr. Colvin R. de Silva referred us to s. 3(2) and to the words "quit notice" repeatedly used in sections 4 and 5 of Act No. 7 of 1979 as amended, and submitted as follows:

- (1) Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict interpretation (Maxwell on "*The Interpretation of Statutes*", 11th Edn. PP. 275, 276 was cited) S. 3 (1) requires that the date to be specified in the notice shall be a date not less than 30 days from the date of its issue or the exhibition of such notice. As far as S.3 is concerned, the notice given is no notice at all, as it does not comply with the imperative requirements of s.3(1).

- (2) It is through s.3(1) that jurisdiction is given to the Magistrate's Court. A valid notice to quit is the foundation on which the Magistrate's Court's jurisdiction rests. It must be a minimum of 30 days notice, before the Competent Authority can come to Court—a pre-condition which he must fulfil in order to activate the jurisdiction of the Magistrate's Court. A valid notice must be given for consequent steps to have the force of law. S.5 does not come into play, unless a proper notice under s.3(1) is given.
- (3) The learned Magistrate had no jurisdiction to proceed with the purported application under s. 5 and the order of ejectment was ex-facie bad, and made without jurisdiction.

Mr. Choksy, P.C. on the other hand, submitted that (1) the Court of Appeal had no jurisdiction to entertain the Revision application, and (2) the requirement of a 30 days notice is a procedural requirement and no prejudice has been caused to the petitioner, as the application for ejectment was filed in the Magistrate's Court only on 10.1.84, and thus the petitioner continued to be in occupation for a period of 3 months after the receipt of the notice to quit.

Parliament has prescribed the form in which a notice to quit has to be given, but it has not specified the consequences of failure to do so. Mr. Choksy has suggested a test which is to be found in *De Smith's "Judicial Review of Administrative Action"* (4th Edn. pp. 122, 123, 142-143).

"When Parliament prescribes the manner or form in which a duty is to be performed or a power exercised, it seldom lays down what will be the legal consequences of failure to observe its prescriptions. That Courts must therefore formulate their own criteria for determining whether the procedural rules are to be regarded as mandatory, in which case disobedience will render void or voidable what has been done, or as directory in which case disobedience will be treated as an irregularity not affecting the validity of what has been done (though in some cases it has been said that there must be substantial compliance with the statutory provisions if the deviation is to be excused as a mere irregularity). Judges have often stressed the impracticability of specifying exact rules category. The whole scope and purpose of the enactment must be considered, and one must assess the importance of the provision that had been

disregarded, and the relation of that provision to the general object intended to be secured by the Act. Furthermore much may depend upon the particular circumstances of the case in hand. Although nullification is the natural and usual consequence of disobedience, breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned."

This test appeals to me and I accept it and apply it. The object of the State Lands (Recovery of Possession) Act, No. 7 of 1979 is the speedy recovery of possession of State lands from persons in unauthorised possession or occupation. The object of giving notice is to tell the occupier that he must vacate the land and hand over possession; otherwise, the Competent Authority will resort to the speedy remedy provided for in the Act. The giving of notice under s. 3(1) to vacate and hand over possession is a mandatory requirement and must be complied with, and that has been done in this case.

It seems to me that the stipulation of 30 days in s. 3(1) has been inserted for the benefit of the occupier. The Competent Authority, at his discretion, may specify a date not less than 30 days or a longer period, having regard to the type of premises to be dealt with, e.g., if it is factory premises, he might specify 90 days to enable the occupier to dismantle the equipment and find an alternate site. The notice that was given in this case was defective in form—it gave only 15 days to vacate. In the words of De Smith "breach of procedural or formal rules is likely to be treated as a mere irregularity if no substantial prejudice has been suggested by those for whose benefit the requirements were introduced."

The notice to quit is dated 10.10.83. The application for ejection was filed on 24.1.84, i.e. the petitioner had 106 days to move out before legal proceedings were instituted. In addition, on petitioner's own request, the learned Magistrate granted him a further 2 weeks for occupation. Thus, no substantial prejudice has been caused to the occupier for whose benefit the time requirement was introduced. In my view, the requirement in s. 3(1) of Act, No. 7 of 1979, that a

minimum of 30 days be given to vacate must be treated as directory and there has been a substantial compliance with the time requirement specified in s. 3(1) of the Act.

Article 138(1) of the Constitution states that "the Court of Appeal shall have and *exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction... and sole and exclusive cognizance by way of appeal, revision etc.*", (emphasis is mine). The revisionary powers of the Court of Appeal is therefore subject to provisions of any law.

S. 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, empowers the President by Order published in the Gazette to declare that any particular land is urgently required for Urban Development Projects. S. 3(a) places restrictions on the remedies available upon an Order made under s. 2.

S. 3. No person aggrieved by an Order made or purported to have been made under s. 2 of this Act or affected by or who apprehends that he would be *affected by any act or step proposed to be taken under or purporting to be taken under this Act or under or any other written law*, in or in relation to any particular land or any land in any area, shall be entitled.

(a) to any remedy, redress or relief in any Court other than of compensation or damages. (emphasis is mine).

S. 4. The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation to any particular land or any land in any area in respect of which an order under or purporting to be made under s. 2 of this Act has been made shall be exercised by the Supreme Court and not by the Court of Appeal.

S. 6. Nothing contained in Section 3 of this Act shall affect the powers which the Supreme Court may otherwise lawfully exercise in respect of any application made under Article 126 of the Constitution or in the exercise of the jurisdiction referred to in section 4 (1) of this Act.

S. 7(1) of the Act enables the Government or any body or authority to take steps under Act, No. 7 of 1979, where it becomes necessary for it to take possession of any land in respect of which an order has been made under s. 2.

S. 10(2) of Act, No. 7 of 1979 states that no appeal shall lie against an order of ejection made by a Magistrate.

The Competent Authority purporting to act under S.3(1) of Act No. 7 of 1979, as amended, served a notice on the petitioner requiring him to vacate the land and hand over possession to him. In terms of s.3 of Act No. 2 of 1980, it was a step taken under or purporting to be under a written law. The order of ejection was made under s.10(1) of Act No. 7 of 1979, and in terms of s.3 of Act No. 2 of 1980 this too was a step taken under or purporting to be under a written law.

Dr. Colvin R. de Silva contended that if the giving of notice is considered a step under a written law under s.3 of Act No. 2 of 1980 express mention of Act. No. 7 of 1979 in s.7 of Act No. 2 of 1980 is superfluous; Act No. 7 of 1979 does not fall within the ambit of s.3 of Act No. 2 of 1980.

I cannot agree. S.7(1) of Act No. 2 of 1980 enables the Government or any body or authority to have resort to the provisions of Act. No. 7 of 1979, in order to take possession of the land. Through s.7(1), the provisions of the later Act have been incorporated into the Act. So the giving of notice to quit under s.3 (1) of Act No. 7 of 1979 can also be considered a "step taken under this act" in terms of s. 3 of Act No. 2 of 1980.

The Petitioner's complaint in the Revision Application is that the notice was bad in law and void as it was in breach of s.3(1) of Act. 7 of 1979 which requires a minimum period of 30 days, and therefore the learned Magistrate had no jurisdiction to proceed with the application for ejection and made an order for ejection. He sought to set aside the order of ejection made by the Magistrate.

Having regard to the provisions of Act. No. 2 of 1980, it seems to me that the only reliefs available to the petitioner were:

- (1) A claim for compensation and damages only under s. 3 (a).
- (2) An application for the issue of writs by the Supreme Court under s.4(1). The petitioner did apply for the issue of a Writ of Certiorari. (SC. 1/84), and urged the same grounds and asked for the same reliefs as in the Revision Application, but, it was ruled out as being out of time.

- (3) A fundamental rights application to the Supreme Court under s.6. The Company did apply under Article 126 of the Constitution but without success.

The appellate jurisdiction of the Court of Appeal to give relief from an Order of ejection by the Magistrate has been removed by s.10(2) of Act No. 7 of 1979. The Revisionary and Writ jurisdiction of the Court of Appeal to grant reliefs in respect of the complaint of the petitioner have been removed by the aforesaid provisions of sections 3(a) and 4(1) of Act No. 2 of 1980. In my view, the Court of Appeal could not have entertained the Revision Application of the petitioner.

Both submissions of Mr. Choksy are entitled to succeed. The Appeal is dismissed, but, I make no order as to costs.

ATUKORALE, J.—I agree.

L. H. DE ALWIS, J.—I agree.
