

RANAWEERA AND OTHERS
v
SUB-INSPECTOR WILSON SIRIWARDENA AND OTHERS

SUPREME COURT
S.N. SILVA, C.J.
RAJA FERNANDO, J. AND
AMARATUNGA, J.
S.C. APPLICATION 654/2003
SEPTEMBER 6, 2005

Constitution – Articles 4(d), 17, 113(A) and 126 – To claim exemption of the time limit of one month for filing an application for violation of Fundamental Rights – Executive or administrative liability – Action taken to implement a valid judicial order – Civil Procedure Code – Sections 188, 225, 320, 323, 351, 362 – Application for execution of a decree – Human Rights Commission Act No. 21 of 1996 – Section 13(1) – The period of time to be excluded in computing the period of one month – The protection available to an officer executing process issued by Court and the limits of such protection – lex non cogit ad impossibilia –

Applicability – Judicature Act 2 of 1978 – Amended by Act 16 of 1989 – Section 52 – Penal Code – Sections 70, 71.

The petitioners have filed this Fundamental Rights Application alleging that the Fiscal in executing the writ of possession issued in D.C. Colombo Case No. 18542/1, acted in violation of their right to the equal protection of the law. The Supreme Court has granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution. When the application was taken up, the State Counsel raised the following objections to the petitioners' application:

- (1) The matters in the petition do not constitute executive or administrative action contemplated in Article 126 of the Constitution.
- (2) The petitioners' application had been filed out of time.

Held:

- (1) The act of a Judge in directing to issue the Writ is not a judicial act but a ministerial act.

Per Gamini Amaratunga, J. -

"Where an application is made by a person entitled to obtain the writ, setting out the particulars specified in Section 224, there is no room for the Court to exercise any discretion or to form its own judgment. The Court is obliged to direct the Writ to issue."

- (2) Execution of a Writ is purely a ministerial act done with judicial sanction, but such sanction cannot elevate the Fiscal's acts to the status of judicial acts which do not fall within the phrase 'executive or administrative action' used in Article 126 of the Constitution.

Per Gamini Amaratunga, J. -

"The Fiscal is a State Officer appointed for the purpose of due execution of the powers and the performance of duties of Courts including the service of process and the execution of decree of Court."

- (3) Fiscal in executing a Writ issued by a Court falls within the ambit of executive or administrative action within the meaning of Article 126 of the Constitution and the Supreme Court has jurisdiction to examine such acts under the fundamental rights jurisdiction of the Supreme Court.
- (4) Under the Roman Dutch law, which is the Common Law of Sri Lanka, a Judge enjoys complete immunity from Civil Liability for the acts done in the exercise of his judicial functions. Since judicial acts do not fall within the ambit of Article 126 of the Constitution, a Judge is not liable for the violation of fundamental rights arising from a judicial act.
- (5) The protection available to an officer executing process issued by Court and the limits of such protection are set out in Section 362 of the Civil Procedure Code. However, the latter part of Section 362 sets out the situations where such an officer may incur liability for acts done in executing process issued by Court.

- (6) When the general law of the land does not confer full immunity for all acts done in executing process issued by Courts there is no justification to exclude all such acts from the purview of the fundamental rights jurisdiction of the Supreme Court. In exercising the fundamental rights jurisdiction, the Supreme Court is under a duty to act in compliance with the letter and the spirit of Article 4(d) of the Constitution.

Held further:

- (7) The time limit of one month prescribed by Article 126 of the Constitution for filing an application for the alleged violation of fundamental rights is mandatory. However, the Supreme Court would entertain an application made outside the time limit of one month provided an adequate excuse for the delay could be adduced.
The principle *lex non cogit ad impossibilia* would be applicable to grant relief to such petitioner.
- (8) In a fundamental rights application, the first opportunity available to a respondent to put forward any defence available to him including the plea of time is the stage at which he has to file his objections after the Court has granted leave to proceed.
- (9) According to Section 13(1) of the Human Rights Commission Act, the mere act of making a complaint to the Rights Commission is not sufficient to suspend the running time relating to the time limit of one month prescribed by Article 126(2) of the Constitution. In terms of the said Section 13(1) the period of time to be excluded in computing the period of one month prescribed by Articles 126(2) of the Constitution is "the period within which the inquiry into such complaint is pending before the Commission".

Cases referred to:

- (1) *Peter Leo Fernando v The Attorney-General*, 1985.
- (2) *Farook v Raymond* 1996 1 SriLR 217.
- (3) *Cannosa Investments Ltd. v Earnest Perera and others* 1991 2 SriLR 214 at 221.
- (4) *Kumarasinghe v The AG*, S.C. F.R. 54/82, S.C. Minutes of 6.9.82.
- (5) *Dayananda v Weerasinghe* 2 F.R.D. 292 1983 2 SriLR 85.
- (6) *Dharmatilaka v Abeynayake* S.C. 156.86, S.C. Minutes of 15.12.88.
- (7) *Perera v The University Grants Commission* 1978-79-80 1 SriLR 128 at 138.
- (8) *Faiz v The Attorney-General* 1995 1 SriLR 372 at 381.
- (9) *Badoordeen v Dingiri Banda* 33 NLR 289.
- (10) *Edirisinghe v Navaratnam* 1985 1 SriLR 100.
- (11) *Subasinghe v Inspector General of Police* SC Sp. 16/99 SCM 11.9.2000.

APPLICATION alleging infringement of fundamental rights.

A.P. Niles with Lakshman Amarasinghe and Arosha de Silva for the petitioners.
Sunil Cooray with Muditha Premachandra for the 6th respondent.

M. Gopallawa SC for the 1st to 5th and 8th respondents.
J.C. Boange for the 7th respondents.

Cur.adv.vult.

May 13, 2008

GAMINI AMARATUNGA, J.

The petitioners have filed this fundamental rights application alleging that the Fiscal of the District Court of Colombo, in executing the writ of possession issued in D.C. Colombo case No. 18542/L, acted in violation of their right to the equal protection of the law. This Court has granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution.

When the application was taken up for hearing, the learned State Counsel appearing for the 1st to the 5th and the 8th respondents raised the following preliminary objections to the petitioners' application.

- (1) The matters averred in the petition do not constitute executive or administrative action contemplated in Article 126 of the Constitution.
- (2) The petitioners' application has been filed out of time.

Since both objections relate to the special jurisdiction of this Court under Article 126 of the Constitution, the Court decided to deal with the preliminary objections before considering the petitioners' application on its merits. Both parties have thereafter filed their written submissions on the preliminary objections.

Briefly, the petitioners' case is as follows. The 1st petitioner is the wife and the 2nd and the 3rd petitioners are the sons of the judgment debtor (7th respondent) in D.C. Colombo case No. 18542/L. The petitioners were not parties to that action. In terms of the decree entered against the 7th respondent, the learned District Judge issued a writ of execution directing that possession of the relevant property be delivered to the judgment creditor (the 6th respondent). The 2nd respondent, the Additional Registrar of the District Court, Colombo, along with the 1st respondent police officer and the 3rd to 5th respondent court officers proceeded to the property described in the writ for the delivery of possession to the 6th respondent.

According to the petitioners, at the time the Fiscal came to the property the 7th respondent judgment debtor was not present in the property as he was living elsewhere due to a family dispute. The petitioners claim that when the Fiscal came to the property, the 1st petitioner informed the Fiscal that she and her sons were not parties to the District Court action and that they held and possessed the property on their own right and not on behalf of or under the 7th respondent judgment debtor and as such they were not bound by the decree or liable to be ejected under the writ. The petitioners state that when the 1st petitioner produced their title deeds in support of their claim, the Fiscal did not pay any attention to their deeds, but informed them that since the petitioners were the wife and the children of the judgment debtor she (the Fiscal) would proceed to execute the writ.

The petitioners allege that thereafter the Fiscal and the 2nd respondent police officer allowed the persons brought by the 6th respondent judgment creditor (referred to in the petition as thugs) to enter their premises and to throw out their belongings and demolish the two buildings situated in the property.

The contention of the petitioners is that when they made their claim before the Fiscal, the latter should have refrained from executing the writ until the petitioners got their claim examined and determined by the Court which issued the writ. The petitioners contend that the Fiscal's act in executing the writ then and there to dispossess them without giving an opportunity to get their claim examined by the Court, resulted in denying to them the equal protection under the law. They further allege that the 1st and 2nd respondents' acts in allowing outsiders to enter their premises and to cause damage to their property were arbitrary and unlawful. It is on the basis set out above that the petitioners seek to bring their case within Article 12(1) of the Constitution.

The position taken up by the Fiscal in her objections is that when she explained the contents of the writ to the 1st petitioner, she agreed to vacate the premises and with the help of the labourers brought by the judgment creditor removed her belongings allowing the Fiscal to deliver vacant possession to the 6th respondent. However since an examination of the merits of the respective cases of the petitioners and the respondents is not within the scope of the present exercise, I take, for the present purpose, the petitioners' version at its highest.

Accordingly the question to be decided by this Court in relation to the first preliminary objection is, whether the acts done by the Fiscal in executing a writ issued by a court of competent jurisdiction constitute executive or administrative action within the meaning of Articles 17 and 126 of the Constitution.

The First Preliminary Objection

In relation to the 1st preliminary objection, the learned State Counsel in his written submissions has taken up the position that "the action taken to implement a valid judicial order do not constitute executive or administrative action and cannot give rise to executive or administrative liability in the course of its implementation." The established legal position in relation to fundamental rights jurisdiction is that the acts of a judicial officer done in the exercise of his judicial discretion do not come within the ambit of executive or administrative action contemplated in Article 17 and 126 of the Constitution. *Peter Leo Fernando v The A.G.*⁽¹⁾, *Farook v Raymond*⁽²⁾.

The proposition put forward by the learned State Counsel, if legally correct, has the effect of extending the doctrine of judicial immunity in the context of the fundamental rights jurisdiction to cover the acts done by ministerial officers in executing process and orders issued by judicial officers in the course of their judicial functions. It appears that the proposition of the learned State Counsel is based on an observation made by H.A.G. de Silva, J. in *Cannosa Investments Ltd. v Earnest Perera and others*⁽³⁾. In that case the petitioner claimed relief against the police for acts done in the course of a search of their premises on the authority of a defective search warrant issued by a Magistrate without complying with the provisions of section 5 of the Gaming Ordinance. The petitioners challenged not only the validity of the search but also the validity of the search warrant issued by the Judge. H.A.G. de Silva, J. having referred to four previous decisions of this Court, has made the observation that "the Court in all those cases has not severed the liability of the ministerial officers as distinct from the judicial order to which the act was referable." at 221.

The cases referred to by H.A.G. de Silva, J. in his judgment are the cases of *Kumarasinghe v The A.G.*⁽⁴⁾, *Dayananda v Weerasinghe*⁽⁵⁾, *Dharmatilake v Abeynayake*⁽⁶⁾ and *Peter Leo Fernando v AG (supra)*.

In the first three cases the petitioners sought relief against their detentions in remand custody on the orders made by Magistrates on false or misleading police reports submitted to them. In *Peter Leo's* case the petitioner sought relief against his detention in the remand cell of the court for several hours on an order made by the Magistrate without complying with the imperative provisions of the Code of Criminal Procedure Act. In all those cases this Court has held that the judicial orders complained of by the petitioners were erroneous, due to improper exercise of judicial discretion, but relief was denied to the petitioners on the basis that deprivation of their personal liberty was directly referable to acts (*albeit erroneous*) which do not fall within the purview of Article 126 of the Constitution.

There is a fundamental difference between the present application and the case of *Cannosa Investments Ltd.* and the cases cited therein. In those cases the petitioners had challenged the validity of the relevant judicial acts as well as the ministerial acts which either preceded or followed the impugned judicial acts. In the present application the petitioners do not challenge the validity of the writ of execution or the legality of the learned Judge's act in issuing the writ. They simply base their case on the acts done by the Fiscal. Thus this case is different from the cases relied on by the learned State Counsel.

As far as I am aware, this Court, in the exercise of the Court's fundamental rights jurisdiction, has not previously examined the liability of a state officer for the acts done in executing valid process or orders issued by a court. In *Peter Leo Fernando's* case Ranasinghe, J. (as he then was) has expressed the view (*obiter*) that "The position of an officer of the State, who, in the course of carrying out an order made by a Judge in the exercise of his judicial functions, violates the Fundamental Rights of a person, is that he would be free from liability, if, in doing so he has acted in good faith, not knowing that the said order is invalid". This view is similar to the exception provided in section 71 of the Penal Code. However, Ranasinghe, J's *obiter dictum* is not relevant to the present application where there is no challenge to the validity or the legality of the writ.

Therefore it is necessary to examine in some detail the question of law which is presently before this Court. Although the validity or the legality of the writ is not a question to be decided in the present case, I propose to briefly consider whether the act of issuing a writ of

execution is a "judicial act" in the sense that term is applied in relation to the fundamental rights jurisdiction of this Court. In the context of the fundamental rights jurisdiction "judicial acts" are the acts of the Judges acting judicially. In *Farook v Raymond (supra)*, Amerasinghe, J. has explained this as follows.

"If the person making the order was not fulfilling the functions and duties proper to an officer appointed to administer the law, viz. to form and pronounce an independent opinion on a matter placed before him, he cannot be said to be acting "judicially". If he has been deprived by the law of the power of deciding and acting according to his own judgment, he cannot act "judicially"; discretion is an attribute, an inherent and essential characteristic, of judicial office; where discretion is ousted by law, the duties, functions and powers appurtenant to judicial office are also taken away". (p229)

Black's Law Dictionary, 5th Edition, defines a judicial act as "an act which involves exercise of discretion or judgment." The right or the power to exercise discretion or to form an independent judgment necessarily connotes the power to select between two alternatives. If there is no room to exercise discretion or to form an independent judgment, an act, although it is done by a judicial officer, is not a judicial act in the sense the term is used in relation to fundamental rights jurisdiction. Certain acts done by Judges in the performance of their judicial functions do not fall into the category of judicial acts and are appropriately called ministerial acts. For example entering the decree under section 188 of the Civil Procedure Code is not a judicial act, but a ministerial act performed by a judge as one of his judicial functions.

Issuing a writ of execution is one of the functions of a Judge. But is it a judicial act? Sections 225, 320 and 323 of the Civil Procedure Code contain provisions regarding applications for execution of decrees. In terms of those sections, when an application is made for execution of a decree, the Court has to satisfy itself only on two matters, namely,

1. that the applicant is entitled to obtain execution of the decree. An applicant (judgment creditor) is entitled to obtain execution of the decree,

- i. Where an appeal was not preferred against the decree during the appealable period, or
 - ii. Where the decree has been confirmed in appeal, or
 - iii. Where the court has allowed execution of the decree pending appeal.
2. that the application contains the particulars specified in section 224 of the Code.

If the application satisfies those two requirements, then the aforesaid three sections provide that the Court "shall direct a writ of execution to issue to the Fiscal." Thus where an application is made by a person entitled to obtain the writ, setting out the particulars specified in section 224, there is no room for the court to exercise any discretion or to form its own judgment. The Court is obliged to direct the writ to issue. I therefore hold that the act of a Judge in directing to issue the writ is not a judicial act but a ministerial act.

The Duty of the Fiscal and the Character of his acts

Section 355 of the Civil Procedure Code which appears in Chapter 23 relating to service of process provides that "Writs shall usually be directed to the Fiscal of the Court issuing the writ" Section 52 of the Judicature Act, No. 2 of 1978 provides that,

"There shall be appointed to the High Court and to each of the District Courts, Family Courts, Magistrate's Courts and Primary Courts established under this Act, a Registrar, a Fiscal and such other officers as may be necessary for the administration and for the due execution of the powers and the performance of the duties of such courts including the service of process and the execution of decrees of Court and other orders enforceable under any written law."

According to Article 113A of the Constitution, the designation of Fiscals attached to Courts is Deputy Fiscal. (The Judicature (Amendment) Act No. 16 of 1989 which amended section 52 to make the formal change in the designation of the Fiscal has not been brought into operation.)

Section 357 of the Civil Procedure Code provides that,

"It shall be the duty of every Fiscal, upon receiving any writ directed to him by any Court, by himself or by his officers to execute such writ conveyed to him according to the exigency of the writ....."

The words "exigency of the writ" mean the requirements of the writ. The writ is the mandate given to the Fiscal by Court and his duty is to execute it according to its terms. It simply is a matter of acting in obedience to the instructions contained in the legal mandate and there is no occasion to exercise his discretion according to his own judgment with regard to the propriety of the act. Thus execution of a writ is purely a ministerial act done with judicial sanction, but such sanction cannot elevate the Fiscal's acts to the status of judicial acts which do not fall within the phrase 'executive or administrative action' used in Article 126 of the Constitution.

The Fiscal is a State Officer appointed for the purpose of due execution of the powers and the performance of duties of courts including the service of process and the execution of decrees of court. He performs duties which are essentially executive in character. "The expression "executive or administrative action" embraces executive action for the State or its agencies or instrumentalities exercising governmental functions. It refers to exertion of State power in all its forms" per Sharvananda, J. (as he then was) in *Perera v The University Grants Commission*⁽⁷⁾. In *Faiz v the Attorney-Genera*⁽⁸⁾ Fernando, J. said that "Executive" is appropriate in a Constitution, and sufficient to include the (official) acts of all public officers, high and low and to exclude the acts which are plainly legislative or judicial The need for including "administrative" is because there are residual acts which do not fit neatly into this three-fold classification." Acts falling within the phrase "executive or administrative action" are not confined only to acts of the Executive branch of the Government. The phrase is wide enough to embrace in appropriate circumstances, the acts done by ministerial officers in relation to the activities which fall within the sphere of the functions of the judiciary.

For the reasons set out above I hold that the acts done by the Fiscal in executing a writ issued by a court fall within the ambit of executive or administrative action within the meaning of Article 126 of the Constitution, and that this Court has jurisdiction to examine such acts under the fundamental rights jurisdiction of this Court. This

conclusion is sufficient to give a ruling on the first preliminary objection, but I wish to go a step further to set out additional reasons for the conclusion I have reached.

Under the Roman Dutch Law, which is the Common Law of Sri Lanka, a Judge enjoys complete immunity from civil liability for the acts done in the exercise of his judicial functions. "No action lies against a judge for acts done or words spoken in honest exercise of his judicial office." *R.W. Lee. An Introduction to Roman Dutch Law 5th Edition page 341.* Section 70 of the Penal Code extends the same protection against liability. Since judicial acts do not fall within the ambit of Article 126 of the Constitution, a Judge is not liable for the violation of fundamental rights arising from a judicial act.

However, the officers who execute writs, process or orders issued by Courts do not enjoy such complete immunity. The protection available to them against criminal and civil liability is limited. In terms of Section 71 of the Penal Code, protection from criminal liability in respect of acts done pursuant to a judgment or an order of a Court is available only if the officer in good faith believed that the judgment or order of the Court was valid. See also the obiter dictum of Ranasinghe, J. in *Peter Leo Fernando v The Attorney-General* quoted earlier. Such an officer who acts contrary to law may incur criminal liability. In *Badoordeen v Dingiri Banda*⁽⁹⁾, a process server, who, in violation of section 365 of the Civil Procedure Code, arrested a person on civil process between the period of sunset and sunrise was convicted under section 333 of the Penal Code.

The protection available to an officer executing process issued by court and the limits of such protection are set out in section 362 of the Civil Procedure Code. The relevant part of section 362 is as follows:

"every person charged under the duty of executing any such process shall be protected thereby from civil liability for loss or damage caused by, or in the course of, or immediately consequential upon, the execution of such process by him or in the case of the Fiscal by his officers, except when the loss or damage for which the claim is made is attributable to any fraud, gross negligence or gross irregularity of proceeding, or gross want of ordinary diligence or abuse of authority on the part of the person executing such process." (emphasis added)

Thus the latter part of section 362 quoted above sets out the situation where such an officer may incur liability for acts done in executing process issued by a court.

When the general law of the land does not confer full immunity for all the acts done in executing process issued by courts, there is no justification to exclude all such acts from the purview of the fundamental rights jurisdiction of this Court. In exercising the fundamental rights jurisdiction this Court is under a duty to act in compliance with the letter and the spirit of Article 4(d) of the Constitution.

I therefore overrule the first preliminary objection and hold that the matters averred in the petition constitute executive or administrative action, within the meaning of Article 126 of the Constitution and this Court has jurisdiction to entertain, hear and decide the petitioners' application.

The Second Preliminary Objection

The second preliminary objection is that the petitioners' application has been filed out of time. The acts resulting in the alleged infringement of the petitioners' fundamental rights had taken place on 23.09.2003. The petition has been filed in this Court on 5.12.2003, after the expiry of the time limit of one month prescribed by Article 126 for filing an application for relief to be obtained under the Article.

In their petition the petitioners have stated that they had made a complaint to the Human Rights Commission on 22.10.2003, which is within one month from the date of the acts resulting in the alleged violation of the petitioners' fundamental rights. The petitioners have produced the receipt dated 22.10.2003 issued by the Human Rights Commission acknowledging the receipt of their complaint.

The time of one month prescribed by Article 126 of the Constitution for filing an application for the alleged violation of fundamental rights is mandatory. Yet in a fit case, the Court would entertain an application made outside the time limit of one month provided an adequate excuse for the delay could be adduced. For instance if a petitioner had been held *incommunicado*, the principle *lex non cogit ad impossibilia* would be applicable to grant relief to such a petitioner. Vide *Edirisuriya v Navaratnam*⁽¹⁰⁾. In the present case the petitioners never suffered from any such disability and the petitioners have not sought exemption from the time bar for any adequate excuse pleaded by

them in their petition. The time bar is a plea available to a respondent of a fundamental rights application to resist the application filed against him. A time bar or prescription which affects jurisdiction of Court must be specifically pleaded in the very first opportunity and if it is not so pleaded, the Court is entitled to proceed on the basis that the respondent has waived his right to raise the defence of time bar in defence of the claim raised against him.

In a fundamental rights application, the first opportunity available to a respondent to put forward any defence available to him including the plea of time bar is the stage at which he has to file his objections after the Court has granted leave to proceed. The 2nd respondent the Additional Registrar/Fiscal of the District Court Colombo, as well as the 6th respondent judgment creditor, a private individual, have raised the plea of time bar in the very first opportunity available to them. In paragraph 7 of the 2nd respondent's affidavit dated 17.4.2004 she has raised the plea of time bar in the following specific words.

"I am advised to state that the petitioners' application has been filed out of time and respectfully move that Your Lordships Court be pleased to dismiss the same in limine."

The 6th respondent judgment creditor too has raised the defence of time bar in her statement of objections dated the 7th day of March 2004. Paragraph 7 of the said objections reads as follows.

"Without prejudice to the aforesaid the 6th respondent states that this application is clearly time barred and should be dismissed in limine."

The averments quoted from the objections of the 2nd and the 6th respondents indicate that at the very first opportunity, the 2nd and 6th respondents have raised the plea of time bar as an absolute bar to the claim of the petitioners for relief against them.

In view of the foregoing it appears that the 2nd preliminary objection raised by the learned State Counsel on 6.9.2005 was a re-agitation of the plea of time bar raised by the 2nd respondent in her affidavit dated 17.4.2004. Thus the petitioners had notice of the plea of time bar before the learned State Counsel again highlighted it on 6.9.2005.

In the written submissions tendered in answer to the learned State Counsel's preliminary objections, the petitioners have sought to invoke the aid of section 13(1) of the Human Rights Commission Act No. 21 of 1996 to circumvent the time bar set out in Article 126 of the

Constitution. The said section 13(1) reads as follows.

"Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of the Article 126(2) of the Constitution."

It is very clear from the section quoted above that the mere act of making a complaint to the Human Rights Commission is not sufficient to suspend the running of time relating to the time limit of one month prescribed by Article 126(2) of the Constitution. In terms of the said section 13(1), the period of time to be excluded in computing the period of one month prescribed by Article 126(2) of the Constitution is "the period within which the inquiry into such complaint is pending before the Commission."

Section 14 of the Human Rights Commission Act (in so far as it is relevant to the present purpose) reads as follows.

"The Commission may on a complaint made to it by an aggrieved person investigate an allegation of an infringement or imminent infringement of a fundamental right of any person"

Thus the Human Rights Commission is not legally obliged to hold an investigation into every complaint received by it regarding the alleged violation of a fundamental right. Therefore a party seeking to utilize section 13(1) of the Human Rights Commission Act to contend that "the period within which the inquiry into such complaint is pending before the Commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court" is obliged to place material before this Court to show that an inquiry into his complaint is pending before the Human Rights Commission.

This is the view taken by this Court in the case of *Subasinghe v the Inspector General of Police*.⁽¹¹⁾ In that case the petitioner sought to invoke section 13(1) of the Human Rights Commission Act to claim exemption from the time limit set out in Article 126 of the Constitution. In that case My Lord the Chief Justice has held that the petitioner has

to adduce some evidence to show that there has been an inquiry pending before the Human Rights Commission into his complaint. In the absence of any such material placed before Court by the petitioner, the objection relating to the time bar was upheld.

The learned State Counsel in his written submissions has specifically cited the case referred to above and attached a copy of the judgment to his written submission. The learned State Counsel thereby put the petitioners on notice that they have to place material before this Court to show that the Human Rights Commission has held an inquiry into their complaint or that an inquiry is still pending before the Commission. However, the petitioners have not adduced any material before this Court to show that an inquiry into their complaint has been held by the Commission or that an inquiry is still pending before the Commission.

The petitioners in their petition to this Court have also stated that they have made an application to the District Court under section 328 of the Civil Procedure Code seeking to get them restored to possession of the property from which they claim that they have been wrongfully evicted by the Fiscal. The learned State Counsel in his written submissions has stated that the District Court of Colombo, having inquired into the application made by the petitioners under section 328 of the Civil Procedure Code, has dismissed the application holding that the Fiscal had rightly evicted them from the property described in the writ. The petitioners have not challenged or contradicted this position.

In view of the failure of the petitioners to place any material before this Court to show that an inquiry into their complaint has been held by the Human Rights Commission or that an inquiry is still pending, I hold that the petitioners are not entitled to rely on section 13(1) of the Human Rights Commission Act to seek exemption from the time limit set out in Article 126(2) of the Constitution. I accordingly uphold the second preliminary objection raised by the learned State Counsel and dismiss the petitioners' application without costs.

S.N. SILVA, CJ. – I agree.

RAJA FERNANDO, J. – I agree.

1st preliminary objection dismissed.

2nd preliminary objection upheld.

Application dismissed.