LAND REFORM COMMISSION
v.
REV. GANEGAMA SANGARAKKITA THERO

COURT OF APPEAL.
DHEERARATNE J. AND VIKNARAJAH J.
C.A. 401/79 (F).
D.C. COLOMBO 3094/ZL.
JUNE 1, 1987.

Land Reform – State Land Possessed by a public company as lessee – Viharagam land or land held in trust under the Buddhist Temporalities Ordinance – Ownership – Possession – Deemed ownership – Agricultural land – SS, 42 A(1), 42 M, 66 of the Land Reform Law.

The question was whether state land which is viharagam land or land held in trust under the Buddhist Temporalities Ordinance possessed by a Public Company on a notarial lease vests in the Land Reform Commission in terms of the ceiling imposed by the Land Reform Law.

An owner in relation to land may be defined as a person who possesses the threefold attributes of ownership; firstly the right of possession, secondly the right of use and enjoyment and thirdly the right of alienation. Apart from those possessing these attributes of ownership is the class of persons who are "deemed owners" entitled to possession of land by virtue of certain alienations made by the state. They are lessees of land from the Republic, permit holders under the Land Development Ordinance and alienees on grants under the Land Development Ordinance. The word "possessed" in the term "owned or possessed" in section 42A carries the same meaning attached to it in section 66 and refers to the possession of a deemed owner. Viharagam or devalagam land owned or possessed by a religious institution, charitable trust as defined in the Trusts Ordinance or a Muslim charitable trust or wakf so long as it is possessed by such trust, land held in trust under the Buddhist Temporalities Ordinance for so long as such land is held in trust under that Ordinance – all as at May 29, 1971 – are excluded from the definition of agricultural land in s.66. The introduction of a new concept of estate land in s.42 M did not operate to bring the excluded categories referred to above but only to bring in excess land owned or possessed by a public company.

The disputed land is part of the temporalities of the Budulena Temple and is excluded from the operation of the Land Reform Law by virtue of the exclusions contained in clauses (*b*) to (*e*) in s.66.

Cases referred to:

(1) *Isaac Perera v. Baba Appu–(1897), 3 NLR 48.*
(2) *Goonewardene v. Rajapakse et al–(1895) 1 NLR 217.*
(3) *Carron v. Fernando–(1939) 35 NLR 352.*
(4) *Ukku Amma et al v. Jema et al–(1949) 51 NLR 254.*
(5) *Colqutoun v. Brooks–(1889) 14 App. Cases 492, 506.*
(6) *Canada Sugar Refining Co. v. R.–[1898] AC 735, 741.*
(7) *Attorney-General v. R. B. Herath–(1960) 62 NLR 145, 147, 148.*

APPEAL from judgment of the District Court of Colombo.

Dr. H. W. Jayewardene Q.C. with *L. C. Seneviratne P. C.* with *Miss P. Guneratne* for defendant-appellant.

C. R. Guneratne P.C. with *Miss I. R. de Silva* for plaintiff-respondent.

Cur. adv. vult.

August 31, 1987.

DHEERARATNE, J.

On 14.8.1978 the plaintiff as Trustee of Budulena Raja Maha Vihara, Pelmadulla, filed this action against the defendant, the Land Reform Commission (hereinafter referred to as LRC), seeking a declaration of title to the land called Lellopitiya Estate, in extent 213 acres 1 rood 21 perches, which the Budulena Temple had leased out to a Public Company, to wit, L.L.P. Estates Co. Ltd. for a period of fifty years from 1.1.1934. The plaintiff, alleging that the LRC took possession of this land on 1.11.1975 illegally and unlawfully, also prayed for damages and ejectment of the LRC. The LRC admitted that it took over possession of the land in dispute, but resisted the action on the basis that in terms of the Land Reform (Amendment) Law No. 39 of 1975, the land in dispute which formed a part of a larger estate of 1882 acres, 1 rood and 29 perches, possessed partly as owner and partly as a lessee by the L.L.P. Estates Co. Ltd., vested with the LRC. The learned District Judge gave judgment for the plaintiff and the LRC has now appealed.

The important and interesting point for our consideration is whether the land in dispute, admittedly owned by the Budulena Temple, of which the plaintiff is trustee, and possessed by L.L.P. Estates Co. Ltd., a public company as a lessee from the temple, vested with the LRC by operation of the Land Reform (Amendment) Law No. 39 of 1975. This Amending law which came into operation on 17.10.1975, inserted a new part numbered IIIA, consisting of sections 42A to 42M, to the Principal Law. The heading to this new part reads,

'Special provisions Relating to State Lands *owned* By Public Companies'. Lest I should be misunderstood, I may mention that I make no attempt at this juncture to attach any special significance to the use of the word '*owned*' in this heading. For the sake of clarity, I may also mention here, briefly that the Land Reform Law No. 1 of 1972 which came into operation on 26.8.1972, imposed a ceiling on ownership of *agricultural land*, but land *owned* or *possessed* by a public company was exempted from the operation of that law. Similarly among other categories, Viharagam land, and land held in trust under the Buddhist Temporalities Ordinance, were exempted from its operation. The portion of the new section 42A(1) material to this case reads:–

> "Every *estate land owned or possessed* by a public company on the date of which this Part of this Law comes into operation, shall, with effect from such date–
>
> (*a*) be deemed to vest in and be possessed by the Commission....."

The term 'estate land' which found no place in the Principal Law came to be defined in the new section 42M as follows:–

> "In this part of this Law, unless the context otherwise requires 'estate land' means any land of which an extent exceeding fifty acres, is under cultivation in tea, rubber, coconut or any other agricultural crop, or is used for any purpose of husbandry and includes unsold produce of that land and all buildings, fixtures, machinery, implements, vehicles and things movable and immovable, and all other assets belonging to the owner of such land and used for the purposes of such land".

Arguments presented to us on behalf of the plaintiff on the one hand and the LRC on the other, centre around two major questions, viz.

(i) Whether the word '*possessed*' in section 42A in the Amending Law is wide enough to include within its ambit possession of the land in dispute by the L.L.P. Estates Co. Ltd., as a lessee.

(ii) Whether the exemption afforded to Viharagam land or land held in trust under the Buddhist Temporalities Ordinance from the ceiling on lands in the Principal Law, remains unaffected, in consequence of the concept of '*estate land*' brought in by section 42M of the Amending Law.

It is contended on behalf of the plaintiff, that the word possessed has been used synonymously with the word owned. To buttress this argument our attention is drawn to the Sinhala version of the Amending Law, which uses the word සත්තකය for the word possess and then we are referred to the gamut of Sinhala words සතු සත්තක, රාජ සත්තක, මා සත්තක, අත් සත්තක all too familiar to us, which connote proprietorship. We are also referred to the Carter's English-Sinhala Dictionary which states සත්තක means 'belonging to'. However, it appears to me that the word සත්තක in the popular usage, also bears the meaning of possess as evidenced by the Sinhala version of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 which reads රජයේ නිවාස (සත්තකය ආපසු ලබා ගැනීමේ) පනත. Besides, in the Carter's Dictionary itself, the word සත්තක also carries the meaning 'in the possession of' and as pointed out by learned counsel for the LRC, the word අයිති in the Sinhala version of the Law would be rendered superfluous, if the word සත්තක carries the same meaning. For the LRC it is argued that the words owned or possessed in section 42A should be read disjunctively, and the word possessed should mean in contradistinction to owned, so as to include the possesson of a lessee. It is contended on behalf of the plaintiff that the word possession here means possession *animus domini*. It is submitted that the legal possession of the land in dispute is with the owner and not with the lessee–the L.L.P. Estates Co. Ltd. Although this last proposition appears to be correct under the Roman Law, it is clear that under the Roman Dutch Law, that concept was discarded and a notarial lease was considered a *pro tanto* alienation, a lessee during the subsistence of the lease having legal possession even to the extent of vindicating his right of possession. This position is amply covered by judicial authority that it hardly requires any labouring at my hands. Vide-*Issac Perera v. Baba Appu* (1); *Gunawardene v. Rajapaksa et al*, (2); *Carron v. Fernando et al*, (3); and *Ukku Amma et al v. Jema et al*(4).

It is contended on behalf of the plaintiff, that the land in dispute, admittedly belonging to the temple, being Viharagam land or land held in trust under the Buddhist Temporalities Ordinance, is excluded from the definition of *agricultural land* within the meaning of section 66 of the Principal Law and continues to be exempted from the operation of the Land Reform Law. For the LRC it is argued that the Amending Law deals with *estate land* that is owned or possessed by a public

company and that it does not deal with *agricultural land.* Since the categories of land excluded from the definition of agricultural land are not excluded from the definition of estate land, it is contended that even if the land possessed by a public company is Viharagam land or trust land, by virtue of section 42A such land would vest with the LRC. It is pointed out in support of this argument, that the Amending Law is a special piece of legislation, designed to take over estate land owned or possessed by a public company lock stock and barrel, as a going concern and as an economically viable unit, without any fragmentation and loss to the economy of the country. However, as estate land sought to be vested with the LRC by section 42A, is that which is owned or *possesed* by a public company, we are again thrown back to the main question, as to whether the disputed land, which is possessed by a public company by virtue of a notarial lease, is caught up within the ambit of the word *possessed* in that section.

From the very submissions presented to us by either side, it would seem right to say that the meaning of the word possessed in Section 42A is not free from ambiguity because it is capable of having more than one meaning. I am of the view that any attempt at construing the correct meaning of the word possessed in section 42A could hardly be expected to succeed by looking at that section in isolation and that the whole Land Reform Law should be examined to discover the legislative intent in using that word. Craies on Statute Law (7th Edition) at page 100 states:–

> *"In Colquhoun v. Brooks* (5) Lord Herschel said, 'It is beyond dispute, too, that we are entitled and indeed bound, when construing the term of any provision found in a statute, to consider any other parts of the act which throw light on the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act'. And Lord Davey in *Canada Sugar Refining Co. v. R*(6) said: 'Every clause of a statute should be construed with reference to the context and other clauses in the Act, so as, as far as possible, to make a consistent enactment of the whole or series of statutes relating to the subject matter.'"

Bindra's Interpretation of Statutes (7the Edition) gives expression to the same view at page 303 in the following words:–

> "It is a fundamental principle in the construction of statutes that the whole and every part of the statute must be considered in the determination of the meaning of any of its parts. In construing a statute as a whole the Courts seek to achieve two principal results–to clear up obscurities and ambiguities in the law and to make the whole of the law and every part of it harmonious and effective. It is presumed that the legislature intended that the whole of the statute should be significant and effective. Different sections, amendments and provisions relating to the same subject must be construed together and read in the light of each other".

Section 42A is not the only section of the Land Reform Law in which the expression *owned* or *possessed* is used. In section 66 (to which I shall refer in detail later) at several places these words appear. It is reasonable to presume that the legislature intended to give the identical meaning to those words wherever that expression appears in the Land Reform Law. I shall now refer to certain provisions of the Principal Law which throw light in discovering the legislative intent of the use of the word possessed. I think, I should commence by referring to the preamble which reads as follows:–

> "A law to establish a Land Reform Commission to fix a ceiling on the extent of agricultural land that may be *owned* by persons, to provide for the vesting of lands *owned* in excess of such ceiling in the Land Reform Commission....."

By section 3(1) of the Principal Law, the maximum extent of agricultural land which may be owned by a person was limited by an imposition of a ceiling. Subsection (4) of section 3 gave an extended meaning to the term owned in the following manner, by creating certain classes of "deemed owners":–

> "for the purpose of subsection (1)–
>
> (*a*) where any land is subject to a mortgage, lease, usufruct, or life interest, the mortgagor, the lessor or any person in whom the title to the land subject to the usufruct or life interest is; and

(*b*) where any land is held on a permit or grant issued under the Land Development Ordinance, the permit holder, or the alienee on such grant,

shall be deemed to be the owner of such agricultural land;

provided, however, that where the lessor of any agricultural land under para (*a*) of this subsection is the Republic, the lessee of such agricultural land shall be deemed to be the owner".

I do not think that there could be any controversy as to who an owner is. An owner in relation to land may be defined as a person who possesses the threefold attributes of, firstly the right of possession, secondly the right of use and enjoyment and thirdly the right of alienation. Vide *Attorney-General v. R. B. Herath et al. (P.C.) 7. A* close examination of subsection (4) of section 3 reveals that the extended meaning of the word *owner* is given to cover two broad classes of persons. First, is the class of persons who have apparently held themselves out as possessing the attributes of ownership. They are the mortgagor, the lessor and the title holder including the dominus. The second, is the class of persons who are entitled to the possession of land, by virtue of certain alienations made by the state, but who do not possess all attributes of ownership. They are–

1. lessees of land from the Republic;
2. permit holders under the Land Development Ordinance; and
3. alienees on grants under the Land Development Ordinance.

It is material to observe here that although alienees on grants are called owners according to the Land Development Ordinance, their right of use and enjoyment and right of alienation are fettered by the conditions stipulated in the grants. Vide sections 32 to 38 of the Land Development Ordinance. Perhaps that explains why the deemed ownership is extended to them.

Next come the definitions of 'agriculture' and 'agricultural land' by Interpretation section 66 which I shall set out in full:–

"'Agriculture' includes–

(i) the growing of rice, all field crops, spices and condiments, industrial crops, vegetables, fruits, flowers, pasture and fodder;

(ii) dairy farming, livestock-rearing and breeding;

(iii) plant and fruit nurseries;

'Agricultural land' means land used or capable of being used for agriculture within the meaning given in this Law and shall include private lands, lands alienated under the Land Development Ordinance or the Crown Lands Ordinance or any other enactment and includes also things attached to the earth or permanently fastened to anything attached to the earth but shall exclude–

(*a*) any cultivated agricultural land *owned* or *possessed* by a public company on May 29, 1971, so long and so long only as such land continues to be so *owned* or *possessed* by such company;

(*b*) any such land which was viharagam or devalagam land on May 29, 1971, so long and so long only as such land continues to be so *owned* or *possessed*;

(*c*) any such land which was *owned* or *possessed* by a religious institution on May 29, 1971, so long and so long only as such land continues to be so *owned* or *possessed* by such religious institution;

(*d*) any such land which on May 29, 1971, constituted a charitable trust as defined in the Trusts Ordinance or a Muslim charitable trust or wakfs as defined in the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956, so long as and so long only as such land continues to be *owned* or *possessed* as such trust;

(*e*) any such land held in trust on May 29, 1971, under the Buddhist Temporalities Ordinance so long and so long only as such land is held in trust under that Ordinance."

If we now look at the scheme of the Land Reform Law, it could be seen that section 3(1) imposes a ceiling on ownership of agricultural land. 'Deemed Owners' are created by section 2(4). In the category of deemed owners are included persons who are in possession of land as lessees from the Republic, permit holders and alienees on permits or grants issued under the Land Development Ordinance. Then comes the definition of agricultural land in section 66 and this cannot be confined to *private land* in view of certain classes of deemed owners. Therefore, the type of land, the possession of which made the

possessor become a deemed owner by virtue of section 3(4), came to be matched and mirrored in the definition of agricultural land by the inclusion also within its ambit "land alienated under the Land Development Ordinance or Crown Lands Ordinance or any other enactment." The main definition of agricultural land is then immediately followed by the categories of land excluded from within its ambit which are specified in paras (*a*) to (*e*). In paras (*a*) to (*d*) the words *owned* or *possessed* appear. In my view, the word *possessed* in those paras has been used to reflect that type of land the possession of which made the possessor a deemed owner in terms of section 3(4). That is to say that *possessed* in paras (*a*) to (*d*) means *possessed* by virtue of–

(i) a lease from the Republic (under the Crown Lands Ordinance or any other enactment) or;

(ii) a permit under the Land Development Ordinance ; or

(iii) a grant under the Land Development Ordinance.

Let me demonstrate the resulting position, if a wider construction is given to the word 'possessed' in paras (*a*) to (*d*). If a person who owned agricultural land in excess of the ceiling at the time the Principal Law came into operation, had leased out all his land to a public company, he would have the unique privilege of continuing to own such extent of land during the continuance of that lease, on the ground that his land is possessed by a public company and as such it is excluded from the operation of the Land Reform Law. I do not think that the legislature could ever have intended such an anomalous result. Clearly in the instant case, it appears that the L.L.P. Estates Co. Ltd., continued to possess the disputed land, not by reason of anything contained in the exception clause (*a*), but, because the disputed land as forming part of the temporalities of the Budulena temple, was excluded from the operation of Land Reform Law by virtue of the exceptions contained in clauses (*b*) or (*e*); but however the position could have been certainly different, if the lessor of the disputed land was a private person to whom the ceiling on lands applied.

In my view the word *possessed* in the term 'owned or possessed' in the new section 42A must necessarily carry the same meaning attached to it in section 66. Otherwise, it can lead to absurd results, which we must presume the legislature never intended. Take the case of a private person, who owned agricultural land but not in excess of the ceiling and who had leased out all that land to a public company

which *possessed* that land along with a larger extent owned by it as one estate land. If the interpretation sought to be given on behalf of the LRC is correct, such a person would lose all his land, although he does not own any land in excess of the ceiling. It must be presumed that the legislature never intended such outrageous injustice and discrimination.

The view I have taken on the meaning of the word *possesed* in section 42A will be sufficent to dispose of this appeal, but, since certain arguments were presented to us on the new concept of *estate land* introduced by section 42A, I would detain to make a a few observations. By the time the Amending Law came into operation, the Principal Law had already been operated. As observed, the method adopted by the Principal Law to exempt a public company from being affected by the ceiling on lands, was to exclude from the definition of agricultural land, land owned or possessed by a public company. So the legislature had already declared that cultivated *agricultural land* owned or possessed by a public company *was not agricultural land,* within the meaning of section 66. Besides, within the definition of agricultural land, no movables were included. It appears to me that the apparent object of the Amending Law is, while subjecting a public company to the ceiling on land, to provide for vesting the excess land owned and possessed by a public company with the LRC, along with a host of movables like unsold crops, machinery, implements, vehicles etc. This object could not have been achieved by the legislature, by an amendment made to the Principal Law, merely deleting from the definition of agricultural land the exception clause (*a*). Hence the new definition of estate land in section 42A. I can hardly imagine that the legislature ever intended to take away *indirectly,* the exemption already granted to Viharagam land or land held in trust under the Buddhist Temporalities Ordinance from being affected by the ceiling on land. The view I have taken on the meaning of the word *possessed* in section 42A, would undoubtedly avoid such an inconsistency and injustice.

For the above reasons I would dismiss the appeal with costs and affirm the judgment of the learned trial Judge.

VIKNARAJAH, J.—I agree.

Appeal dismissed.

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