
MANSOOR AND ANOTHER
V.
O.I.C. AVISSAWELLA
POLICE AND ANOTHER

COURT OF APPEAL.

S. N. SILVA, J.

C. A. APPLICATION NO. 04/85.

M. C. AVISSAWELLA NO. 38240.

May 06, June 03, July 15, and August 26, 1991.

Tenant cultivator - Eviction - Proceedings under section 62 (1) (b) of the Administration of Justice Law and section 77 of the Primary Courts Procedure Act - Jurisdiction - Rights as tenant cultivator under Agricultural Lands Law, No. 42 of 1973 and succeeding law under Agrarian Services Act, No. 58 of 1979 - Can relief be also claimed under the Administration of Justice Law and Primary Courts Procedure Act No. 44 of 1979?

Where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others.

The machinery under the Agricultural Lands Law and the Agrarian Services Act is the only one available to a tenant cultivator of paddy land to secure and vindicate his tenurial rights. The general procedure obtaining in Part VII of the Primary Courts Procedure Act with regard to disputes affecting land where a breach of the peace is threatened or likely, is not applicable in such a situation.

Cases referred to:

1. *Hendrick Appuhamy vs John Appuhamy*, 69 N.L.R. 289.
2. *Wilkinson vs Barking Corporation* (1948) 1 K.B.D. 721, 724.
3. *Pasmore vs Oswaldwistle, U.D.* (3) (1898) A.C. 387, 394.
4. *Argosam Finance Co., Ltd. vs Oxby* (1964) 3 All E.R. 561.
5. *Bemby Singh vs Davith Singh*, (1978 - 79) 2 Sri L.R. 215.

Application in revision of the order of the Magistrate of Avissawella.

N. R. M. Daluwatta, P.C. with *Miss S. Abeyjeewa* for Petitioners.

D. S. Wijesinghe, P.C. with *Miss A. B. D. Dharmadasa* for Respondents.

October 04, 1991.

S. N. SILVA, J.

The Petitioner has filed this application in revision against the Order made by learned Magistrate on 26-09-1984, in the above case. The proceedings in the case commenced upon an information filed by the Officer-in-charge of the Avissawella Police on 20-02-1979 under section 62(1)(b) of the Administration of Justice Law, No. 44 of 1973, which was then in operation. The proceedings were continued under the Primary Courts Procedure Act, No. 44 of 1979 in terms of section 77 of that Act.

The information states that there is a dispute as to the "ande" rights to the paddy land called "Honiton deniya". The 1st Petitioner claims to have been the owner of the paddy land. He gifted his rights to his son who is residing abroad and was not a party to the proceedings in the Magistrate's Court. The claim of the 1st and 2nd Petitioners to this application (being the 1st and 3rd Respondents in the Magistrate's Court) is that the 2nd Petitioner is the lawful tenant cultivator of the paddy land under the 1st Petitioner and was evicted from the paddy land on 05-02-1979 by the 2nd Respondent to this application.

The 2nd Respondent filed an affidavit in the Magistrate's Court claiming that he purchased the paddy land on 25-07-1976 from a sister of the 1st Petitioner. It is also stated that the 1st Petitioner was a witness to that deed of transfer. The 2nd Respondent further claims that he has cultivated the paddy land from the date of purchase.

Learned Magistrate by his order held that the 2nd Petitioner was the tenant cultivator of the paddy land till he was evicted on 05-02-1979. It appears from this finding that the learned Magistrate did not accept the affidavit of the 2nd Respondent. Learned Magistrate held that the Court had no jurisdiction to order relief since it is a matter of an eviction of a tenant cultivator of a paddy land and dismissed the information.

Learned President's Counsel appearing for the Petitioner submitted that the Magistrate was in error when he refused to grant relief to the 2nd Petitioner. Whilst conceding that the 2nd Petitioner's rights as tenant cultivator were secured by the Agricultural Lands Law, No. 42 of 1973 which was then in operation, it was submitted that the existence of a special remedy under the said law and under the succeeding Agrarian Services Act, No. 58 of 1979 did not remove the jurisdiction of the Primary Court, in the matter of granting relief.

Learned President's Counsel for the 2nd Respondent urged certain matters of a preliminary nature. It was submitted that the 2nd Petitioner in whose favour relief is sought in this application has not filed an affidavit and that in any event there is a failure to comply with the provisions of Rule 46 of the Supreme Court Rules. It was further submitted that the 1st Petitioner who is neither the owner nor the person entitled to possession of the paddy land, has no locus standi in this matter. In any event it was submitted that the complaint of the Petitioners is of an unlawful eviction of a tenant cultivator and that such a matter has to be redressed through the special means provided for in the Agricultural Lands Law and the Agrarian Services Act.

The 1st Petitioner has specifically stated in his affidavit dated 30-04-1979 that the 2nd Petitioner being the tenant cultivator was evicted by the 2nd Respondent and certain others on 05-02-1979. The 2nd Petitioner has also made the same complaint in his affidavit addressed to the Assistant Superintendent of Police (IRS). Hence, the complaint of the Petitioners is of an unlawful eviction of a tenant cultivator.

The Paddy Lands Act, No. 1 of 1958 was enacted for the specific purpose of providing security of tenure to tenant cultivators of paddy land. The Act was succeeded by the Agricultural Lands Law, No. 42 of 1973 which has the same objective. The Law was succeeded by the Agrarian Services Act, now in operation, which has the same objective. These Laws grant

special recognition to tenant cultivators of paddy lands and protection to their tenurial rights. Section 3(1) of the Agricultural Lands Law and section 5(1) of the Agrarian Services Act specifically provide that a tenant cultivator of any extent of paddy land has the right to occupy and use such extent in accordance with the provisions of the respective Laws and shall not be evicted from such paddy land notwithstanding anything to the contrary in any oral or written agreement. It is further provided that no person shall interfere with the occupation and use of such paddy land by the tenant cultivator. Therefore the right of a tenant cultivator to use and occupy the paddy land of which he is tenant, is protected not only vis-a-vis his landlord but also as against any other person.

Section 3(3) of the Agricultural Lands Law and section 5(3) of the Agrarian Services Act give a right to a tenant cultivator who is evicted to make a complaint of such eviction to the Agricultural Tribunal or the Commissioner of Agrarian Services, as the case may be. If such complaint of eviction is established a tenant cultivator is restored to possession by an order issued to the Fiscal by the Magistrate. It is thus seen that the applicable law provides an extensive protection to the tenurial rights of cultivators of paddy lands. The law also contains provisions for the vindication of such rights and for redress against any breach of these rights by any person.

In a proceeding instituted under section 62 of the Administration of Justice Law or the corresponding section 66 of the Primary Courts Procedure Act, the Magistrate's Court or the Primary Court, as the case may be, is empowered to inquire into disputes affecting land where a breach of the peace is threatened or likely. The phrase "dispute affecting land" is interpreted in section 75 of the Primary Courts Procedure Act to include "any dispute as to the right to the possession of any land.....or as to the right to cultivate any land or a part of a land.....". Therefore, ordinarily, the right of a tenant cultivator to occupy and cultivate a paddy land would come within the meaning of a "dispute affecting land". How-

ever, as noted above, the status and rights of tenant cultivators of paddy lands is the subject matter of specific statutory provisions. In contrast the procedure in the Primary Courts Procedure Act is in the nature of a general provision which applies in relation to every dispute affecting land where a breach of the peace is threatened or likely.

The question to be decided in this application is whether a tenant cultivator who is evicted from a paddy land can avail himself of an order made by the Primary Court in a proceeding under Part VII of the Primary Courts Procedure Act notwithstanding the remedy provided to him under the provisions of the Agricultural Lands Law and later the Agrarian Services Act. Learned President's Counsel for the Petitioner submitted that such a course of action is possible and contended that the Primary Courts Procedure Act in fact gives additional protection to a tenant cultivator.

The submission of learned President's Counsel for the 2nd Respondent is that the remedy under Agricultural Lands Law and the Agrarian Services Act given to a tenant cultivator to complain of eviction and to secure restoration of possession is a special remedy which excludes any remedy that may be obtained from the exercise of the ordinary jurisdiction of the Primary Court.

As noted in Halsbury's Law of England (4th Edition) at paragraph 946, the question whether a special statutory remedy excludes the ordinary jurisdiction of a Court has to be decided by an examination of the scope and the wording of the statute providing such special remedy.

In the case of *Hendrick Appuhamy vs John Appuhamy* (1), Sansoni, CJ examined the provisions of the Paddy Lands Act (then in operation) to consider whether those provisions exclude the right of a landlord to institute an action in the District Court for the ejection of his tenant and for damages, on the ground that the tenant has failed to maintain the paddy land diligently. The District Judge held with the landlord on

the basis that there was no section in the Paddy Lands Act ousting the jurisdiction of the District Court. After an examination of the provisions of the Paddy Lands Act and certain leading authorities in England, Sansoni CJ concluded that he cannot agree with the decision of the District Judge. It was held that the action was not maintainable in view of the special provisions contained in the Paddy Lands Act.

Sansoni CJ followed the dicta of Asquith LJ, in the case of *Wilkinson vs Barking Corporation* (2). At page 724 Asquith LJ stated as follows:

“It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others.”

The authority for that statement of Asquith LJ is traced to the dictum of Lord Halsbury in the case of *Pasmore vs Oswaldwistle, U.D.* (3) (1898) A.C. 387. At page 394 Lord Halsbury stated as follows:

“The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and runs through the law.”

It is apparent on an examination of the later case law in England that this principle stated by Lord Halsbury and Asquith LJ is now accepted without contest. In a later case, *Argosam Finance Co. Ltd. vs Oxby* (4) Lord Denning, and Diplock LJ stated as a firm proposition of law, that where a matter has been vested by Parliament within the jurisdiction of the Commissioner of Inland Revenue, there was clearly no jurisdiction on the part of a Court to answer such a matter in an action begun by an originating summons.

Learned President's Counsel for the Petitioners relied on the judgment of this Court in the case of *Bemphy Singho vs Davith Singho* (5). In that case a tenant cultivator who was unlawfully evicted filed an action in the District Court for restoration of possession and damages. He restricted his remedy in the District Court only to damages and obtained relief from the Commissioner for restoration of possession under the Agrarian Services Act. The learned District Judge granted the claim for damages. It was argued in this Court that the District Judge had no jurisdiction to grant damages in view of the provisions of the Agrarian Services Act. Atukorale, J. held that there is no provision in the Agrarian Services Act whereby a tenant who has been unlawfully evicted could secure damages in respect of such eviction. In the absence of such provision it was held that a tenant who has been unlawfully evicted has a cause of action in the regular Courts to recover damages. This decision does not in any way support the submission of learned President's Counsel that a tenant who is unlawfully evicted is entitled to obtain restoration of possession upon an order of the Primary Court. The basis of the decision is an absence of any provision in the Agrarian Services Act whereby the tenant may obtain damages for unlawful eviction. It has to be noted that there is specific provision in the Agricultural Lands Law and the Agrarian Services Act which gives a right to a tenant as against the landlord and any other person to use and occupy the paddy land and to secure restoration of possession if he is unlawfully evicted. These provisions in the Agricultural Lands Law and the Agrarian Services Act are in the nature of a special right and a remedy for the infringement of that right. Therefore, I hold that the machinery under the Agricultural Lands Law and the Agrarian Services Act is the only one available to a tenant cultivator of paddy land to secure and vindicate his tenurial rights. The general procedure obtaining in Part VII of the Primary Courts Procedure Act with regard to disputes affecting land where a breach of the peace is threatened or likely, is not applicable in such a situation.

A further reason for the above conclusion is manifest on an examination of the provisions of Part VII of the Primary Courts Procedure Act. In terms of section 67(1) an inquiry under this Part has to be held in a "summary manner" and has to be concluded within three months of the commencement of the inquiry. Section 74(2) provides that an appeal will not lie against any determination or order under this Part. It appears from section 74(1) that the remedy available to a person affected by an order after such a summary inquiry is to establish his right or interest to the land in a civil suit. A Judge of the Primary Court is specially required to explain the effect of this provision to the persons concerned in the dispute. Therefore, according to the legislative schemes an order made by the Primary Court in a proceeding under Part VII will be operative only till the dispute affecting land is finally resolved on a "civil suit". The phrase "civil suit" is clearly referable to an action filed in a regular Court exercising civil jurisdiction. In view of the aforesaid provisions of the Agricultural Lands Law and the Agrarian Services Act a dispute arising from a complaint of eviction made by a tenant cultivator of a paddy land cannot be the subject of a civil suit. Such a complaint has to be the subject of an inquiry by the Tribunal or the Commissioner, as the case may be. Therefore, the Judge of the Primary Court cannot comply with the requirements of section 74(1) in respect of such a dispute. This by itself is in my view good reason for holding that the Primary Court should not exercise jurisdiction in relation to a dispute arising from a complaint of eviction of a tenant cultivator of paddy land. Furthermore, if such jurisdiction is exercised it may result in conflicting orders made by the Primary Court on the one hand and the Commissioner on the other.

For the reasons stated above I am of the view that the Primary Court Judge did not err in law when he declined to exercise jurisdiction in this matter.

In view of the foregoing finding it would not be necessary to consider the other matters urged by learned President's

Counsel for the 2nd Respondent. However, I have to note that there is merit in the objection based upon an absence of an affidavit filed by the 2nd Petitioner. The relief sought by this application is for an order directing that the 2nd Petitioner be restored to possession of the paddy land in question. According to the certified copy of the proceedings in the Magistrate's Court the 2nd Petitioner did not file an affidavit in that Court claiming a right to be restored to possession. He has also not filed an affidavit in this Court claiming such a right. In the circumstances I am of the view that there is contravention of the provisions of Rule 46 of the Supreme Court Rules and that the Petitioners are not in any event entitled to the relief sought in the application. The application is accordingly dismissed. The 1st and 2nd Petitioners will pay a sum of Rs. 1750/- as costs to the 2nd Respondent.

Application dismissed.
