

KANDIAH
v.
**LAND REFORM COMMISSION
AND TWO OTHERS**

COURT OF APPEAL
S. N. DE SILVA J.
C.A. APPLICATION NO. 1152/83.
JUNE 30, 1988.

Land Reform — Land Reform (Special Provisions) Act No. 39 of 1981, section 21 — When does owner of vested land become statutory lessee — Duty to alienate land to statutory lessee — Writ of Mandamus.

Certain estates (including Orwell Estate and Sevanakawatta Estate) in extent over 400 acres of which petitioner was co-owner whose share worked out to only 30 acres were acquired under the Land Acquisition Act. In terms of section 21 of the Land Reform (Special Provisions) Act No. 39 of 1981 such acquired lands were deemed to have vested in the Land Reform Commission (1st respondent). There being no objection from any quarter on 30.06.1982 the 1st respondent decided to alienate/release 23 acres of Sanquhar Estate to the petitioner and this decision was communicated to the petitioner by letter of 12.07.1982 (P8) as land could not be released from Orwell and Sevanik Estates. The decision however was not implemented by the 1st respondent. Petitioner was asked if he would accept land from Nayapanna Estate but petitioner declined to accept this.

The reason for 1st respondent's failure to implement his decision was stated to be because the M.P. for Gampola objected to the release of land from Sanquhar Estate.

The Chairman of the 1st respondent filed affidavit stating that the petitioner is only entitled to receive compensation for the land in terms of section 21(4) of the Act of 1981 as his ownership was of an extent less than 50 acres.

Held:

(1) The Estates of which the petitioner was co-owner having been acquired on 21.08.1972 and no compensation having been paid as at 03.06.1981 the criteria specified in s.21 (1) are satisfied and the petitioner becomes a statutory lessee under the Land Reform Law irrespective of the extent owned by him and therefore entitled to the rights of a statutory lessee to make a statutory declaration under s. 18 of the Land Reform Law and make an inter-family transfer in respect of such land in terms of s. 14.

(2) Section 21(2) casts a duty on the 1st respondent to alienate to a statutory lessee the maximum extent of agricultural land which may be owned by any person under the principal enactment (Land Reform Law) or the extent in fact acquired from such statutory lessee whichever is less.

(3) The petitioner being a statutory lessee has a right to demand the performance of this duty and to have a writ of mandamus issued to secure performance of this duty by the 1st respondent.

Per S. N. Silva, J.: "In dealing with the facts I found that the 1st Respondent did not implement the decision in document P8 and later purported to vary the decision acting under dictation by the Member of Parliament. The 1st Respondent is a statutory functionary and it cannot abdicate its duty or exercise its discretionary power under 'dictation' by the Member of Parliament or any other person."

APPLICATION for writ of mandamus to issue to the Land Reform Commission.

Faiz Mustapha P.C. with Mahanama de Silva and Zenul Letheef for petitioner.

H. M. P. Herath for 1st respondent.

Y. L. M. Mansoor for added-respondent.

August 25, 1988

S. N. SILVA, J.

The Petitioner has filed this application for a Writ of Mandamus to issue directing the Land Reform Commission (1st Respondent) to give effect to the determination evidenced by document marked P8 and to place the Petitioner in possession of an extent of 23 Acres of the land called 'Sanquhar Estate' situated in the Kandy District.

The Petitioner was a co-owner of two estates called 'Orwell' and 'Sevanakwatta' containing in extent over 400 Acres, in the Kandy District. His share is computed at only 30 Acres. On 21-8-1972, the said estates were acquired under the provisions of the Land Acquisition Act and were handed over to the National Agricultural Diversification and Settlement Authority (N. A. D. S. A.). It is alleged that the estates were acquired as an act of political victimization by the former regime because another co-owner, S. V. Anamalai of the Ceylon Workers Congress was a strong supporter of the United National Party. After the present regime assumed office 50 Acres of the Orwell Estate was divested to Anamalai. It is common ground as between the Petitioner and the 1st Respondent that the Petitioner did not receive compensation for his share of the co-owned property that was acquired and the remaining portions of the Estates continued to vest in the government.

It appears that section 21 of the Land Reform (Special Provisions) Act No. 39 of 1981 was enacted to provide a measure of relief to persons whose lands were acquired on or after 29-5-1971 (being the date on which land reform was announced and the operative date in several provisions of the Land Reform Law No. 1 of 1972) and to whom no compensation had been paid at the commencement of the Act, to wit, 3-6-1981.

It is common ground that in terms of section 21(1) of the Act the said estates that were hitherto vested in the Government under the Land Acquisition Act were deemed to have vested in the 1st Respondent under the Land Reform Law. The Petitioner sought an alienation in his favour of the extent that had been

owned by him, from Orwell Estate. His application was recommended by the Member of Parliament for Gampola by his letter dated 9-1-1982 marked P1. The Chairman of the 1st Respondent informed the Petitioner that land could not be alienated to him from Orwell Estate and thereupon the Petitioner requested an alienation of a lesser extent, 23 Acres, from Sanquhar Estate. By document marked P2 dated 3-2-1982 the Chairman of the 1st Respondent sought the views of the same Member of Parliament regarding the proposed alienation and by letter dated 8-2-1982 marked P3 the Member of Parliament stated that he had no objection to it. It is clear from the documents dated 19-1-1982 marked 'X', 31-5-1982 marked P4, and 2-6-1982 marked P5 that the 1st Respondent sought the observations of the N. A. D. S. A. and the District Land Reform Authority regarding the proposed alienation. There being no objection from any quarter, on 30-6-1982, the 1st Respondent decided to alienate/release 23 Acres of Sanquhar Estate to the Petitioner. The Petitioner had planned not only to grow tea on the said land but also to set up a dairy and poultry farm. Therefore, immediately upon the said decision being made by the 1st Respondent, he tendered his letter of resignation dated 1-7-1982 marked P6 to the Janatha Estates Development Board No. 1, where he held the post of Assistant Manager. The letter specifically states that he is resigning to divert his full attention to the development of the land obtained from the 1st Respondent. By letter marked P7, the J. E. D. B. accepted the resignation:

The decision of the 1st Respondent made on 30-6-1982 was communicated to the Petitioner by letter dated 12-7-1982 marked P8. The title of the letter states that it relates to the release of land in terms of the Land Reform (Special Provisions) Act No. 39 of 1981. In paragraph 2 it states that the extent of land owned by the Petitioner cannot be released from the Orwell and Sevanek Estates. Paragraph 3 states that in lieu of the land owned by him in the said estates an extent of 23 Acres is released to him from the Sanquhar Estate and that he should take over possession of the land from the Director of the Land Reform Authority, Kandy District. The conditions governing the release are marked P9.

Although by P8 the 1st Respondent requested the Petitioner to take over possession of the said extent from Sanquhar Estate, the

decision itself was not implemented by the 1st respondent. After about six months the Petitioner sent letter marked P11 to the Chairman of the 1st respondent stating that he should not be "harassed" further and that the land should be handed over without further delay. Thereafter the Petitioner received letter dated 22-2-1983 stating that it is not possible to release 23 Acres from Sanquhar Estate and inquiring whether he would accept land from the Nayapana Estate. The Petitioner objected to the fresh proposal on the ground that Nayapana Estate is a neglected steep land covered with jungle and unsuited for the project envisaged by him.

The cause for the decision of the 1st Respondent being varied as aforesaid is revealed in the several documents and affidavits filed by the parties. In affidavit dated 11-5-1984, the Chairman of the 1st respondent has admitted that the Member of Parliament who had previously recommended the application of the Petitioner by documents marked P1 and P3 subsequently requested the 1st Respondent at different times to sell the land in question to three other persons. Firstly, to one H. K. B. K. Bandara, secondly to one Prasad Dissanayake and finally, to one A. G. M. Maharoof being the added Respondent to this application. Prasad Dissanayake referred to above is the son of the Member of Parliament. The Petitioner has alleged that the Member of Parliament manouvered to get the land for his son and that Maharoof was introduced as a mere front because the Petitioner addressed a complaint through the Ceylon Workers Congress to the President regarding the failure of the 1st Respondent to implement the decision in his favour. Be that as it may, letter dated 9-5-1983 marked P17 sent by the Additional Secretary to the President states as follows:

"The LRC has reported that the M.P. for Gampola has objected to the release of land from Sanquhar Estate. The M.P. has suggested that alternate land be given from Nayapana Estate. Mr. Kandiah has been accordingly informed and a reply from him is being awaited."

This letter taken together with the other documentary evidence produced by the Petitioner and the admissions made by the Chairman of the 1st Respondent clearly establish that the

1st Respondent was acting under dictation by the Member of Parliament in not implementing the decision contained in document marked P8 and later in purporting to vary the decision by document marked P14.

Counsel for the Petitioner submitted that in terms of section 21(2) of the Land Reform (Special Provisions) Act No. 39 of 1981 his client is entitled to an alienation in his favour of the extent of land acquired from him under the Land Acquisition Act. He further submitted that the obligation cast on the 1st Respondent by section 21(2) is in the nature of a public duty and that mandamus will lie to secure its performance. Counsel for the 1st and the added respondents contended that the Petitioner owned less than 50 Acres and as such is not a statutory lessee entitled to an alienation in his favour in terms of section 21(2). The Chairman of the 1st Respondent in paragraph 25 of his affidavit dated 25-11-1983 has stated that the Petitioner is only entitled to receive compensation for the land in terms of section 21(4) of the said Act.

Section 21 of the Land Acquisition (Special Provisions) Act No. 59 of 1981 enacts as follows:

"21. (1) Where lands have been acquired under the Land Acquisition Act on or after May 29, 1971 and no compensation has been paid in respect of such lands, on the date of commencement of this Act notwithstanding anything in this Act or any other law, such lands shall be deemed to have been vested in the Commission under the Land Reform Law and accordingly, the owners of such lands shall be entitled to the rights of a statutory lessee under section 14 and section 18 of that law and may, within three months of the date of commencement of this Act, make a statutory declaration to the Commission.

(2) Where it is not practicable for the Commission to make a statutory determination under section 19 of the Land Reform Law in respect of any land vested in the Commission by virtue of subsection (1), specifying the portion or portions of the agricultural land owned by the

statutory lessee which he shall be allowed to retain, the Commission shall alienate to such statutory lessee, the maximum extent of agricultural land which may be owned by any person under the Land Reform Law or the extent of the land acquired from such statutory lessee under the Land Acquisition Act, whichever is less.

(3) Where it is not practicable for the Commission to grant approval for the transfer by the statutory lessee of any agricultural land under subsection (2) of section 14 of the Land Reform Law, the Commission shall alienate land to the extent of the land acquired from such statutory lessee under the Land Acquisition Act, to any child or to a parent of such statutory lessee.

(4) Where no compensation has been paid for the lands acquired under the Land Acquisition Act deemed to be vested in the Commission under subsection (1) and where no determination is made under subsection (2) or where no approval is granted under subsection (3), the statutory lessee be entitled to receive compensation for such lands under this Act.

As noted above, this section appears to have been enacted as a measure of relief to persons whose lands were acquired after 29-5-1971 but in respect of which no compensation had been paid as at 3-6-1981. The draftsman may have had in mind a limited category of persons. However, subsection (1) as appearing above is open-ended and would encompass all acquisitions made during the 10 year period where no compensation was paid as at the terminal date. Considering the usual delay attending the payment of compensation, this would cover a wide category of acquisitions far removed from the contemplation of the draftsman. The amendment enacted in section 13 of the Land Reform (special Provisions) Act No. 14 of 1986 substituted section 21(1) with a new provision containing additional criteria that limit the operation of the provision to a specific category of acquisitions. The amendment, however, is not retrospective in operation and applying section 6(3) (c) of the Interpretation Ordinance, this proceeding has to be determined as if there had been no repeal of section 21(1).

As stated above it is common ground that Estates of which the Petitioner was a co-owner vested in the 1st Respondent by the operation of section 21(1). The estates were acquired on 21-8-1972 and no compensation had been paid as at 3-6-1981. Therefore the criteria specified in section 21(1) are satisfied. Counsel for Respondents submit that the Petitioner does not become a statutory lessee because his ownership is of an extent less than 50 Acres. They support this submission on the basis that a statutory lease is created in terms of section 3(2) of the Land Reform Law only where a person owns land in excess of the ceiling which is 50 Acres where the Petitioner is concerned.

The Respondent's submission is correct in so far as it applies to the provisions of the principal enactment. However 21(1) deems certain land to have vested in the 1st Respondent notwithstanding the provisions of any other law. Therefore irrespective of the extent owned by the Petitioner the land is deemed to have so vested. The concomitant of the vesting thus created is that the Petitioner becomes entitled to the rights of a statutory lessee. The Respondent's contention that the owner of the vested land becomes a statutory lessee only if his total ownership is in excess of the ceiling is not supported on a plain reading of the section. Since the words of the section are clear and unambiguous it is not permissible to import concepts from the principal enactment to restrict the plain meaning of the section.

The Respondents' submission is untenable due to the following reasons as well:

- (i) Section 21(2) provides that "the Commission shall alienate to such statutory lessee the maximum extent of agricultural land which may be owned by any person under the Land Reform Law or the extent of the land acquired from such statutory lessee under the Land Acquisition Act, **which ever is less**". The second alternative would apply to a person (like the Petitioner) who owned land below the ceiling. If as contended by the Petitioner a person became a statutory lessee under section 21(1) only where he owned land above the ceiling the second alternative would be redundant.

(ii) The Chairman of the 1st Respondent has stated in paragraph 25 of his affidavit dated 29-11-1983 that the Petitioner is entitled only to receive compensation in terms of section 21(4). A reading of section 21(4) reveals that only a statutory lessee is entitled to receive compensation. It could never be contended that the phrase "statutory lessee" has one meaning under subsection (4) but a different meaning under subsection (2) and (3). On the other hand if the phrase "statutory lessee" appearing in subsection (4) is also restricted to a person who owned land above the ceiling, a person (like the Petitioner) who owned land below the ceiling and whose land is deemed to have vested in the Commission under subsection (1) will receive neither land nor compensation. A result obviously far removed from the intention of the legislature.

For the reasons stated above, I hold that the Petitioner whose land vested in the 1st Respondent in terms of sections 21(1) has to be considered a statutory lessee for the purposes of section 21(1), (2), (3) and (4). The Petitioner is thus entitled to make a statutory declaration as provided for in section 18 of the principal enactment specifying inter alia his preference to retain any portion or portions of the vested land and to make an inter-family transfer in respect of such land in terms of section 14.

The document marked P1 (which is admittedly contained in the files of the 1st Respondent) support the contention of the Petitioner that he applied for a release of the extent owned by him, from Orwell Estate. Even assuming that the Petitioner failed to make a statutory declaration in proper form, that by itself, does not deprive the Petitioner of the status of a statutory lessee.

Section 21(2) casts a duty on the 1st Respondent to alienate to a statutory lessee the maximum extent of agricultural land which may be owned by any person under the principal enactment or the extent in fact acquired from such statutory lessee, whichever is less. The Petitioner being a statutory lessee has a right to demand the performance of this duty. The precondition for the performance of this duty as contained in the subsection is that, it is not practicable for the 1st Respondent to

make a statutory determination specifying the portion of land owned by the statutory lessee that may be retained by him. In other words the duty cast on the 1st Respondent by subsection (2) has to be performed in every instance where the 1st Respondent cannot permit the statutory lessee to retain a portion of the land owned by him prior to the acquisition. In document marked P8 the 1st Respondent has stated that it is not possible to alienate a portion of Orwell or Sevanak Estate to the Petitioner. This tantamounts to an admission by the 1st Respondent that the precondition referred above is satisfied. Indeed, the 1st Respondent sought to perform the duty by deciding to alienate 23 Acres of Sanquhar Estate to the Petitioner. The argument now raised that the word used in document P8 is "release" and not "alienate", is a mere play on words and does not merit consideration by Court.

In dealing with the facts I found that the 1st Respondent did not implement the decision in document P8 and later purported to vary the decision acting under dictation by the Member of Parliament. The 1st Respondent is a statutory functionary and it cannot abdicate its duty or exercise its discretionary power under dictation by the Member of Parliament or any other person. Document P14 which was sent by the 1st Respondent under dictation by the 1st Respondent is accordingly of no force or avail in law.

The 1st Respondent has made a decision in document P8 to perform the duty cast upon it by section 21(2). However this decision has not been implemented. Therefore the Petitioner is entitled in law to a Writ of Mandamus to secure the performance of the duty. Accordingly I allow the application and direct the issue of a Writ of Mandamus as prayed for in paragraph (a) of the prayer to the petition. I order the 1st Respondent to pay a sum of Rs. 1500/- as costs to the Petitioner.

Mandamus issued