

LATIFF

v.

THE LAND REFORM COMMISSION

COURT OF APPEAL.

H. A. G. DE SILVA, J. AND ABEYWARDANE, J.

C. A. APPLICATION 620/80.

FEBRUARY 1, 1984.

Land Reform Law, No. 1 of 1972 – Determination to alienate in terms of section 24(1) – Subsequent revocation prior to delivery of possession – Exercise of statutory power – Discretion – Principles of natural justice – Writ of Certiorari.

The petitioner made an application to the respondent for the alienation by way of sale of portions of the petitioner's land that had become vested in the respondent under the Land Reform Law, No. 1 of 1972.

The respondent informed the petitioner that the Minister of Agricultural Development and Research had in accordance with a recommendation made by the Advisory Board of his Ministry granted approval to the respondent to alienate the said land and called upon the petitioner to refund the proportionate amount of compensation already received by him with interest thereon for the portion to be alienated. The petitioner complied with this direction.

The respondent informed the petitioner of the terms and conditions subject to which the land was being alienated and directed him to take possession of the land. However, subsequently, the respondent informed the petitioner that the Minister had revoked the grant of his approval to the said alienation.

The petitioner in this application sought a writ of certiorari to quash the decision to revoke the alienation on the following grounds :

(1) The revocation had been made in violation of the principles of natural justice as the petitioner was not given a hearing to show cause against it.

(2) A determination to alienate can be revoked only for the causes specified in the statute.

(3) The respondent has no unfettered discretion to revoke, and

(4) The decision to revoke is a discretion vested in the respondent and not in the Minister.

In order to show that a Writ of Certiorari lay to quash the proceedings the petitioner submitted that the decision to alienate the lands by the respondent-Commission was one made in the exercise of a statutory power and was not a matter of a mere contractual obligation.

Held –

(1) The respondent-Commission, which is a statutory corporation, in the performance of its duties exercises the various statutory powers with which it is clothed and does not merely perform a contractual obligation.

(2) The only reason given by the respondent for the revocation of the decision to alienate the land being the withdrawal of the earlier approval given by the Minister and no opportunity having been given to the petitioner to show cause against the proposed revocation, the decision to revoke the earlier decision to alienate the land was bad.

(3) The respondent had no unfettered discretion but a discretion to be exercised solely for the purposes of achieving the objects of the statute. Such a decision must be exercised fairly and in conformity with the principles of natural justice.

Cases referred to

(1) *Nanayakkara v. The Institute of Chartered Accountants of Sri Lanka and others*, [1981] 2 S.L.R. 52.

(2) *Padfield v. Minister of Agriculture*, [1968] 1 All E.R. 694, 719

(3) *Sirisena v. Senanayake and another – C.A. Application 1103/80 C.A. Minutes of 26.6.1981.*

APPLICATION for Writ of Certiorari.

Faiz Musthapa with N. M. Saheed for the petitioner.

H. D. A. de Andrade for the respondent.

Cur. adv. vult.

March 2, 1984

H. A. G. DE SILVA, J.

This is an application for the issue of (1) an order in the nature of a Writ of Certiorari quashing the decision made by the respondent to revoke the determination made by him to transfer the land called Nedunchenai to the petitioner's children Farhana Latiff and Nusrath Latiff, (2) an order in the nature of a Writ of Mandamus directing the respondent to alienate to the petitioner's children the said Farhana Latiff and Nusrath Latiff, the land called Nedunchenai and Sirisumanawatta and place them in possession thereof. At the hearing of this application learned Counsel for the petitioner confined his submissions to the issue of an Order in the nature of a Writ of Certiorari.

The facts relied upon by the petitioner's Counsel before us were as follows :-

The petitioner's family consisted of himself, his wife, and six children who were in 1972 all under the age of 18 years. This family owned several allotments of land acquired by virtue of purchase and inheritance containing an aggregate extent of 287 acres, 3 roods and 20 perches.

By virtue of the operation of the provisions of the Land Reform Law, No. 1 of 1972, the petitioner became entitled to retain 50 acres of the said aggregate extent of 287 acres, 3 roods and 20 perches and accordingly an extent of 237 acres, 3 roods and 20 perches in excess of the said ceiling vested in the respondent and was deemed to be held by the petitioner on a statutory lease from the respondent. In 1972, the petitioner furnished a "statutory declaration" on the prescribed form in terms of section 18 (1) of the said Land Reform Law setting out the total extent of the agricultural land held by the petitioner and members of his family under a "statutory lease" from the respondent.

In 1974, the respondent published a statutory determination in the Government Gazette specifying an extent of 50 acres of named agricultural lands which were permitted to be retained by the petitioner and as a result the remaining 237 acres, 3 roods and 20 perches of agricultural land vested in the respondent. In 1976, the petitioner received compensation under the provisions of the said Land Reform Law for the agricultural lands which became vested in the respondent.

Two of the petitioner's children, Farhana Latiff and Nusrath Latiff, reached the age of 18 years on 2nd February, 1978 and 26th December, 1979, respectively and the petitioner thereafter on 7th January, 1980 made an application to the respondent for the alienation by way of sale of 41 acres, 3 roods and 15 perches from and out of the 237 acres, 3 roods and 20 perches of the petitioner's land that had become vested in the respondent (P1).

The respondent by letter dated 26th March, 1980, informed the petitioner that the Minister of Agricultural Development and Research had in accordance with a recommendation made by the Advisory Board of his Ministry granted approval to the respondent to alienate to the petitioner's said children this extent of 41 acres, 3 roods and 15 perches and that as the petitioner had received

compensation for the said lands, the petitioner should refund a sum of Rs. 41,000, the proportionate amount of the compensation so received with interest, both totalling Rs. 68,328.69 (P2). The petitioner paid the said sum of Rs. 68,328.69 on 26th March, 1980 (Vide receipt P3).

On 27th March, 1980, by P4 and P4A the respondent informed the petitioner that the said Minister had approved the alienation by the respondent to the petitioner's said children two allotments of land, viz. Nedunchenai of 35 acres in extent and Sirisumanawatta containing an extent of 6 acres, 3 roods and 15 perches both of which are situated at Puttalam. The annexure P4A sets out the terms and conditions subject to which the said lands were being alienated in terms of section 24(1) of the said Law. The petitioner was also directed to take possession of the said land from the Land Reform Authority of the Puttalam District. Accordingly on 1st April, 1980, the petitioner called at the Madampe office of the respondent Commission and was informed that possession of the said lands would be handed over within a few days. However, by letter dated 13th May, 1980, the respondent informed the petitioner that the said Minister had revoked the grant of his approval to the said alienation to the petitioner's said children (P5).

The Chairman of the respondent-Commission has in his affidavit taken up the position that the recommendation made by the Advisory Board or the approval of the Minister referred to by the petitioner has no force or effect in law and further averred that the alienation by way of sale as contemplated by section 22(1) (f) and given effect to under section 24(1) of the said Law is at the sole discretion of the respondent and that in any event such sale has to be effected by a deed of transfer.

Learned Counsel for the petitioner submits that the revocation of the determination to alienate as contained in P5 is bad for the following reasons :-

- (1) The revocation has been made in violation of the principles of natural justice. Once a determination has been made to alienate the lands, the petitioner gets thereby a legal right and the respondent cannot revoke such a determination without giving the petitioner a hearing.

- (2) A determination to alienate can be revoked only for the cause specified in the statute. No reasons have been specified in P5 for the purported revocation nor is it for reasons specified in the statute. Hence the revocation has been done without jurisdiction.
- (3) The respondent does not have an unfettered discretion to revoke and such a revocation could be made, if at all, taking into consideration relevant circumstances. No relevant circumstances are disclosed in this instance.
- (4) The decision to revoke is a discretion vested in the respondent. In this instance, there has been an abdication of the statutory powers vested in the respondent when it purported to act under the dictation of the said Minister.

The Land Reform Law, No. 1 of 1972, came into operation on 26th August, 1972. The objects of the Law are set out in its long title and it states that the objects of law are inter alia ". to prescribe the purposes and the manner of disposition by the Commission of Agricultural Lands vested in the Commission so as to increase productivity and employment."

Section 3 of the Law places a ceiling on the extent of agricultural land which may be owned by any person. The word "person" is defined in section 66 inter alia to mean a family consisting of the surviving spouses or spouse and any surviving child or children under the age of eighteen years. Sub-section 2 thereof states that—

"Any agricultural land owned by any person in excess of the ceiling on the date of commencement of this Law shall as from that date—

- (a) be deemed to vest in the Commission ; and
- (b) be deemed to be held by such person under a statutory lease from the Commission".

Section 18 requires every person to make a declaration in respect of agricultural land subject to a statutory lease.

The petitioner, his spouse and his six children who were all under 18 years of age at that time had agricultural land aggregating 287 acres, 3 roods and 20 perches. In terms of the Law as this was in

excess of the ceiling of 50 acres specified in section 3, the whole extent of 287 acres, 3 roods and 20 perches vested in the respondent Commission and the petitioner held it under a statutory lease from the Commission. It is common ground that the petitioner did make the required statutory declaration under section 18 of the Law.

On receipt of such a statutory declaration the respondent-Commission is required by section 19 of the Law to make a "statutory determination" specifying the portion or portions of the agricultural land owned by the statutory lessee which he shall be allowed to retain and this "statutory determination" has to be published in the Gazette. The respondent-Commission had made such a "statutory determination" specifying an extent of 50 acres of agricultural land which the petitioner was permitted to retain, and this "statutory determination" was published in the Gazette. As a result 237 acres, 3 roods and 20 perches of the agricultural land owned by the petitioner and members of his family vested in the respondent-Commission. Compensation for the land so vested in the Commission was paid to the petitioner.

Section 22 (1) (f) of the Law permitted the respondent-Commission to alienate by way of sale agricultural land vested in the Commission to persons who were minors at the time of the imposition of the ceiling on agricultural land and whose parents were dispossessed of such land in excess of the ceiling by reason of such excess having vested in the Commission under the Law. In terms of this section an application was made by P1 on 7th January, 1980, for the alienation by way of sale of 41 acres, 3 roods and 15 perches from and out of the extent that had vested in the Commission, to two of the petitioner's children who had reached the age of 8 years. Sub-section (3) enjoins the Commission, in determining the person to whom vested land is to be alienated, that consideration should be given, as far as practicable, to persons from the administrative district where such land is situated.

Section 26 of the said Law empowers the Commission, by a notice published in the Gazette, to call for applications in the prescribed form from persons for the alienation to them of any extent of agricultural land by the Commission. Sub-section (2) states that "any application received by the Commission under sub-section (1) shall be scrutinized by the Commission and disposed of on its merits".

Mr. Andrado submitted that the application made by the petitioner for alienation under section 22 (1) (f) cannot be considered to be an application made in response to a Gazette notification published under section 26 (1) and hence section 26 (2) will have no application. A perusal of P 1 seems to indicate that the application has been made by him in what appears to be a prescribed form as contemplated in sub-section (1) of that section whether it was made in response to a Gazette notification or not. Even otherwise, could one be heard to say that in considering an application made under sub-section (1) the merits of the application must be taken into account but if an application for alienation is made without a prior Gazette notification, its merits should not be the criterion? Whether the statute spells it or not, surely the merits of such an application must be a vital factor in the Commission's decision to alienate or not, the land, to an applicant and the Commission cannot act capriciously.

Section 24 (1) states that "the Commission may alienate any agricultural land to any person subject to such terms and conditions as it may deem fit and as would ensure that such land is vested for the purpose for which it was alienated" while sub-section (2) empowers the Commission to cancel such alienation where any term or condition subject to which agricultural land is alienated is not complied with. On such cancellation the land re-vests in the Commission.

By P 2 dated 26.03.1980 the petitioner was informed by the respondent-Commission that the Minister of Agricultural Development and Research had in accordance with a recommendation made by the Standing Committee of the Cabinet, granted approval to the respondent-Commission to alienate to the petitioner's children the applied for extent of 41 acres, 3 roods and 15 perches. It further stated that as the petitioner had already received compensation he should refund the proportionate amount of the compensation, viz. Rs. 41,000 with interest, both totalling Rs. 68,328.69. This amount has been paid by the petitioner as evidenced by P 3.

Again on 27th March, 1980, by P4 the information given by P3 was confirmed while specifying the lands and extent to be alienated. Attached to this letter was P4A setting out the terms and conditions under which the alienation would be made in terms of section 24 (1). He was also asked to take possession of the said

land from the Land Reform Authorities of the Puttalam District. Nevertheless by P5 dated 13th May, 1980, the respondent-Commission informed the petitioner that the said Minister had revoked the grant of approval for the alienation of the said lands to his children.

Learned Counsel for the petitioner submitted that the decision to alienate the lands by the respondent-Commission was one made in the exercise of a statutory power and was not a matter of mere contractual obligation. He cited the case of *Nanayakkara v. The Institute of Chartered Accountants of Sri Lanka and Others* (1). This case involved an examination of the question whether the relationship between the employer, a corporate body established by statute and the petitioner, an employee of that institution was one of master and servant and whether a Writ of Certiorari lay to quash the proceedings of an inquiry held by the appointees of the Institute. The employee's letter of appointment required the employee to inter alia comply with regulations contained in the Manual of Procedure applicable to such an employee. It was held that " an examination of the regulations in the Manual of Procedure showed that the petitioner's employment had a statutory flavour which differentiated it from the ordinary relationship of master and servant. The Manual of Procedure gave rights to the employee and imposed obligations on the employer going beyond the ordinary contract of service and regulating, inter alia, the grounds and procedure for dismissal. The requirement that there might be a hearing or inquiry also brought in the requirement that the principles of natural justice must be observed. The remedy by way of certiorari was therefore available to an employee ".

A consideration of the various provisions of the Land Reform Law makes it clear that the respondent-Commission which is a statutory Corporation set up under section 43 of the said Law, in the performance of the duties, that it has been set up to perform, does so by exercising the various statutory powers it is clothed with, by the provisions of the Land Reform Law and in particular in making a decision to alienate it is exercising its powers under section 22 and section 24 of the said Law and is not merely performing a contractual obligation.

Learned Counsel for the petitioner submits that the power of alienation given by section 22 (1) (c) must be to achieve the purposes set out in the long title to the statute i.e. one of the

objects of the statute. Section 22 (3) sets out statutory guidelines and section 22 (a) to (g) prescribes the purposes for which land vested in the Commission may be utilised or alienated. It has therefore a strong statutory flavour.

The respondent-Commission has averred in the statement of objections that the power to alienate is at the sole discretion of the Commission but learned Counsel for the petitioner submits that in such a situation there is a duty cast on the respondent-Commission to act honestly, with good faith reasonably and in accordance with the objects of the statute.

H. W. R. Wade on *Administrative Law* (4th edition), 346, dealing with the abuse of discretion quotes from the judgment of Rand, J. in a Canadian case in respect of the cancellation of a liquor licence as follows :-

" In public regulation of this sort there is no such thing as absolute and untrammelled 'discretion', that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator ; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. 'Discretion' necessarily implies good faith in discharging public duty ; there is always a perspective within which a statute is intended to operate ; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another Province or because of the colour of his hair ? The ordinary language of the Legislature cannot be so distorted. "

Learned Counsel for the petitioner submits that in cancelling the determination to alienate the lands, the respondent-Commission has abdicated its powers and discretion and has according to P5 gone solely on the order of the Minister. No other reason has been relied on by the respondent-Commission. In *Padfield v. Minister of Agriculture* (2) Lord Upjohn states -

" that without throwing any doubt on what are well known as the Club expulsion cases, where the absence of reasons has not proved fatal to the decision of expulsion by a club committee, a decision of the Minister stands on quite a different basis : he is a

public officer charged by Parliament with the discharge of a public discretion affecting Her Majesty's subjects ; if he does not give any reason for his decision, it may be, if circumstances warrant it, that a Court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and directing a prerogative order to issue accordingly

.....

It has therefore been submitted that there is no unfettered discretion to alienate land or revoke such alienation. Revocation can be before alienation and after determination but must be for cause e.g. the Land Reform Law has in section 24 been given the power to cancel an alienation for violation of the terms and conditions of the alienation, i.e., for cause. It has been therefore submitted that in this instance the revocation of the determination to alienate is ultra vires the powers given to the respondent-Commission by statute.

The petitioner also claims that this revocation of the decision to alienate has been made without giving him a hearing, i.e., though it was the exercise of an administrative function, there was an obligation to follow the principles of natural justice. This submission is further strengthened by the fact that section 26 (2) enjoins the Commission to decide in regard to alienation on the merits of each application.

Wade in his treatise on *Administrative Law* at page 444 states—

"The leading speech of Lord Reid in *Ridge v. Baldwin* is of the greatest significance because of its extensive review of the authorities, which inevitably exposed the fallacies into which the decisions of the 1950s had lapsed. He attacked the problem at its root by demonstrating how the term 'judicial', had been misinterpreted as requiring some superadded characteristic over and above the characteristic that the power affected some person's rights. The mere fact that the power affects rights is what makes it 'judicial', and so subject to the procedure required by natural justice. In other words, a power which affects rights must be exercised 'judicially', i.e. fairly, and the fact that the power is administrative does not make it any less 'judicial' for this purpose".

He continues at page 445—

“In a later case Lord Denning M. R. pithily summed up the situation : ‘At one time it was said that the principles (sc. of natural justice) only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge v. Baldwin*. At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong’”

At page 446 he states—

“Although *Ridge v. Baldwin* sorted out the confusion caused by the artificial use of the word ‘judicial’ to describe functions which were in reality administrative, it did not eliminate this misnomer from the law. A means of doing so, however, has appeared in a later line of cases which lay down that powers of a purely administrative character must be exercised ‘fairly’ meaning in accordance with natural justice—‘which after all is only fair play in action’ : administrative powers which affect rights must be exercised in accordance with natural justice”.

Learned Counsel for the respondent-Commission relied on an unreported decision of this Court in C.A. Appln : No. 1103/80 (CA minutes of 26.6.1981). The petitioner had applied for a Writ of Mandamus to give effect to the recommendation made by the Advisory Board appointed by the Minister to look into injustices resulting from the operation of the Land Reform Law. This body had no legal status and it was held that the Land Reform Commission was not under any legal duty of a public nature to give effect to the recommendations of that body. In my view the facts of that application are clearly distinguishable from the facts in the instant case. There the Land Reform Commission had made no determination itself, but in the instant case P2 written on behalf of the Chairman of the respondent-Commission had informed the petitioner that the Minister had approved the alienation and called upon the petitioner to pay a specified amount and take possession of the land. This has been reiterated in P4, *i.e.* the respondent-Commission had adopted the Minister’s recommendation and had itself made a determination accordingly.

In deciding to revoke the determination to alienate, the respondent-Commission has in P5 given as the only reason for its decision the withdrawal of the earlier approval given by the

Minister. The respondent-Commission in its statement of objections avers that any recommendation made by the Advisory Board or any approval of the Minister has no force or effect in law. This is quite true, but, that is the only reason given in P5 for the revocation of the determination to alienate. No opportunity has been given to the petitioner to show cause against such a proposed revocation. Though this is an instance of the exercise of an administrative function there was an obligation on the respondent-Commission to act fairly. It had no unfettered discretion but a discretion to be exercised solely for the purposes of achieving the objects of the statute. In this the respondent-Commission has failed. In my view the submissions of learned Counsel for the petitioner are entitled to succeed and I therefore quash the decision made by the respondent-Commission to revoke the determination made by it to alienate the lands to the petitioner's children as contained in P5. The application for the issue of an Order in the nature of a Writ of Certiorari is allowed. The respondent-Commission shall pay to the petitioner Rs. 315 as costs of this application.

ABEYWARDENE, J.—I agree.

Application for Writ of Certiorari allowed.
