

**KUMARIHAMY AND OTHERS**  
**v.**  
**WIMALADASA**

COURT OF APPEAL.

EDUSSURIYA, J.,

JAYASINGHE, J.

C.A. NO. 214/92 (F).

D.C. KURUNEGALA NO. 451/L.

FEBRUARY 11, 1998.

*Contempt of Court – Interim injunction – Acting in violation – Burden of proof – Acquisition of land in respect of which an injunction is issued – Its effect.*

The plaintiff-appellants instituted action against the defendant-respondents complaining that defendants were attempting to open up a cart-track over the plaintiffs paddy-field and obtained an interim injunction restraining the defendant-respondents from proceeding with the proposed roadway. The plaintiffs later complained that the defendants along with the administrative officer of the Village Council had acted in violation of the interim injunction and moved Court to deal with the defendants for contempt of Court. The District Court found the defendants not guilty. On appeal –

**Held:**

1. Injunction granted by a competent Court must be obeyed by the party until it is discharged notwithstanding the fact that it was irregularly issued.
2. The question for determination is whether the plaintiff-appellant has adduced enough evidence to support the position that the defendants in fact has acted in violation of the interim injunction. It must be borne in mind that the burden of proof in a charge of contempt is very high.
3. The interim injunction was issued on the basis that the plaintiffs were the owners of the land in respect of which the interim injunction was issued. However, by the date of the alleged contempt, the said land had been acquired by the State, thus, the interim injunction though formally still in force as it had not been dissolved ceased to be meaningful and therefore the plaintiff cannot urge the Court to punish the accused for contempt of Court.

**APPEAL** from the District Court of Kurunegala.

**Case referred to:**

*Silva v. Appuhamy* 4 NLR 178.

*Faiz Musthapha*, PC with *Hemasiri Withanachchi* for the plaintiff-appellant.

*Ananda Kasturiarachchi* with *Ms. Medini de Silva* for the defendant-respondent.

*Cur. adv. vult.*

September 18, 1998.

**JAYASINGHE, J.**

The plaintiffs instituted action in the District Court of Kurunegala against the defendants on 10.03.1978 complaining that the defendants were attempting to open up a cart-track over the plaintiff's paddy land known as Amuna Maha Liyadda and that the 1st defendant summoned the plaintiff (identity of the plaintiff not disclosed in the plaint) to his residence, and threatened him with bodily harm if he (plaintiff) objected to the proposed cart track which was scheduled to commence on 12.03.1978. The plaintiff states that he was offered alternate land for a roadway and also alleged that the proposed cart-track was to gain direct access to the house of the 2nd defendant. Plaintiffs alleged that the 3rd and 4th defendants were also motivated by jealousy. The plaintiffs asked for and obtained an interim injunction restraining the defendants from proceeding with the proposed roadway. The defendants filed objections on 16.05.1978; that 2nd, 3rd and 4th defendants are respectively the Secretary, Chairman and Member of the Palle Thibatuwawe Grama Sangwardana Samithiya. They pleaded that there was a roadway from Weerembugedara Gamsabaha road to Bamunugedara *via* Yalawa which runs over the plaintiffs and several other paddy-fields; that steps were being taken by the Village Council to widen the existing cart-track and that the defendants had made representations to the Special Commissioner and Member of Parliament of the area, the 1st respondent regarding the said road widening

after the dissolution of the Village Council; that the plaintiff too participated at the discussions held at the Grama Sanwardana Samithiya; that the land required for the said road widening was acquired by order made under proviso to 38 (a) to the Land Acquisition Act and published by *Gazette* notification dated 04.05.1978 and that the Assistant Commissioner of Local Government was taking steps for the widening of the roadway and moved for dismissal of the plaintiffs' action. The defendants filed answer on 20.10.1978 thereafter. The plaintiff filed an amended plaint on 25.03.1983 in which they alleged that the defendants had notwithstanding the interim injunction proceeded to widen the roadway causing damage in a sum of Rs. 53,176 and prayed for judgment. The plaintiffs on 11.03.1981 complained to the District Court of Kurunegala by way of petition/affidavit that the defendants along with the Administrative Officer of the Kalugamuwa Village Council had acted in violation of the interim injunction and moved Court to deal with the defendants for *contempt of Court*. The inquiry commenced on 02.05.1991. At the said inquiry the 2nd plaintiff gave evidence; that in the year 1978 he obtained an interim injunction restraining the defendants from opening up a roadway through his land as set out in the schedule to the plaint which is depicted in plan No. 1310 prepared by A. B. M. Webber marked and produced X. The said interim injunction was served on all four defendants. In answer to a question by Court the witness stated 2nd, 3rd and 4th defendants proceeded with the construction on 6.3.1981. He denied that there was roadway over his land when he obtained the interim injunction. The witness identified by name Tikiri Banda the 2nd defendant, Appuhamy the 3rd and Wimaladasa the 4th. The 2nd defendant is now deceased and that he is proceeding against the 3rd, 4th only and prayed that the 3rd and 4th defendants be dealt with. (On a later date the 3rd defendant also died and the case proceeded only against the 4th). He stated that the Shramadana to construct the roadway commenced on 06.03.1981. Under cross-examination he admitted that the land had been acquired by the State and according to D2 an order has been made by the Magistrate to hand over possession to the fiscal by order dated 09.10.1979 when the plaintiff resisted the take over by the Acquiring Officer. One R. M. Tikiribanda also gave evidence. He stated that the construction of the road commenced on 11.03.1978 through a Shramadana and it was recommenced on

06.08.1981 after a lapse of time; that Wimaladasa the 4th defendant and 25 to 30 people were engaged in the Shramadana. When questioned regarding the specific acts done by the 3rd and 4th defendants, the witness replied that they supplied tea to the volunteers and also brought earth from their fields. The volunteers stated under cross-examination that he was not present at the scene where the Shramadana was done but that he watched what they did from his house which according to him was 60 to 70 fathoms away. Though the witness stated that Wimaladasa and 25 to 30 others participated in the Shramadana he shifted his position therefrom stating that Wimaladasa and Appuhamy brought tea and earth. When questioned as to who constructed the culvert having said that it was Wimaladasa and Tikiri Banda he again shifted his position saying that he was not there. He also stated that he was unaware that the 3rd and 4th defendants gave instructions regarding the construction of the road.

The chief clerk of the Pradeshiya Sabhawa one Karunasena gave evidence for the defence. He produced D3 an agreement entered into between the Pradeshiya Sabha and the Grama Sanwardana Samithiya for the construction of the road which included the culvert at a cost of Rs. 86,840. Thereafter, the 4th defendant gave evidence. He stated that he was a Grama Sevaka Niladhari and that there was an interim injunction issued and that the said interim injunction related to the construction of Yalawa Motabara road which feeds five other roads at Uhumiya; that the said road was vital to the life of the community and that the land owners agreed to contribute to the construction of the said road; that there was no existing roadway or even a footpath. The villagers used the ridge or the niyara and that the area is inhabited by about three hundred to four hundred families. He denied that the roadway was constructed over the plaintiffs' land; that the land in question was acquired by the State for the roadway; that the Kalugamuwa Village Council had entered into an agreement with Tikiri Banda (2nd defendant) for the construction of the said road; that he participated at the Shramadana in the year 1978; denied that he participated in the year 1981; that it was Tikiri Banda (2nd defendant) who constructed the road and he denied that any earth was removed from his paddy-field for the construction of the road.

The 3rd defendant who is now deceased also gave evidence. His position was that he did not participate in the construction of the roadway after the interim injunction was issued. He denied that he participated in the Shramadana on 6.3.1981 and that it was Tikiri Banda who constructed the road having obtained the contract. His position was that at the time the interim injunction was served the construction of the road had not reached the plaintiff's land and the construction was abandoned. Thereafter, it was recommenced on 6.3.1981 after a lapse of about 3 years. He denied that he even saw the construction proceeding after 6.3.1981. His evidence was a total denial that he acted in violation of the interim injunction.

The question for determination by this Court is whether the defendants had defied the judicial order and consequently committed contempt of Court. Mr. Musthapha submitted that the interim injunction issued by the District Court of Kurunegala at the time Tikiri Banda entered into an agreement for the construction of the road was still in force. Admittedly, the defendants had not sought to have the said injunction dissolved on the ground that the portion of the land in respect of which the injunction was issued and operative had subsequently being acquired. Mr. Musthapha also submitted that the subsequent acquisition of the land in respect of which an injunction has been issued does not affect the validity of the injunction inasmuch as an injunction granted or obtained is an order of Court and must be obeyed and that the defendants are guilty of breach of the injunction. It is contempt which the Court will punish. Mr. Musthapha further submitted that the reason for the rule stated above is found in the necessity of preserving the respect and obedience due to the mandate of equity and preventing disastrous confusion which would inevitably result from allowing parties against whom injunctions are issued to be themselves the Judges of the propriety of the relief or the regularity of the proceedings from the nature of the case. The tribunal granting the relief must itself be the arbitor and its mandate are to be strictly observed until properly revoked. Mr. Musthapha referred to N. D. Basu, Law of Injunctions second revised edition. Mr. Musthapha further submitted that if the defendants-respondents were of the view that the subsequent acquisition of the said land had

automatically nullified the effect of the injunction they ought to have applied to the District Court for an appropriate order instead of erroneously assuming that their purported recourse to executive – administrative action would have the effect of overriding the authority of the Courts by forestalling an order thereof. In *Silva v. Appuhamy*<sup>(1)</sup> it was held that an injunction granted by a competent Court must be obeyed by the party whom it affects until it is discharged notwithstanding the fact that it was irregularly issued. I am not in disagreement with Mr. Musthapha on the exposition of the principles cited above.

But, the question for determination as stated before is whether the plaintiff has adduced enough evidence to support the position that the defendants in fact has acted in violation of the interim injunction. The trial Judge has given his mind to this aspect and had observed that the plaintiffs had failed to discharge that burden. He has in his order adverted to the discrepancies in the plaintiffs case and consequently held that there has been no violation of the interim injunction by the 3rd and 4th defendants as alleged and has found the defendants not guilty. In this connection it must be borne in mind that the burden of proof in a charge of contempt is very high.

We may add that the interim injunction was issued on the basis of the averments that the plaintiffs were the owners of the land in respect of which the interim injunction was issued. However, by the date of the alleged contempt, admittedly by the 2nd plaintiff, the said land had been acquired by the Government and thus, the interim injunction though formally still in force as it had not been dissolved ceased to be meaningful and therefore the plaintiffs were no longer in a position to urge this Court to punish the accused for contempt of Court.

We see no reason to interfere with the findings of the learned District Judge. The appeal is accordingly dismissed. We make no order for costs.

**EDUSSURIYA, J.** – I agree.

*Appeal dismissed.*