

BANDA
v.
PRESIDENT, M.P.C.S.LTD.,
MEDIRIGIRIYA AND ANOTHER

COURT OF APPEAL
FERNANDO, J. AND
AMERATUNGA, J
HC ANURADHAPURA 209/99
MC.HINGURAKGODA 18402
CA(PHC) 188/2000
MAY 10, 2002

State Lands (Recovery of Possession) Act, No. 7 of 1979 as amended by Act, No. 50 of 1987, section 18(1)(gg) – Land belonging to State given to the Co-operative Society – Transfer of Powers (Divisional Secretaries) Act, No. 52 of 1982, section 4 – Co-operative Society authorized by Divisional Secretary to exercise all powers under Act, No. 7 of 1979 – Delegation – Validity – Who is a public officer? – Constitution, Article 170.

The land is a State land given to the Medirigiriya Co-operative Society for its use. The appellant is an unauthorized occupant of the land. On an application by the President of the Society who was authorized by the Divisional Secretary, the Magistrate's Court issued an order of eviction of the appellant from the relevant land. The High Court dismissed the application to revise the said order.

Held :

- (i) The land is owned by the State and given to the MPCS for its use.
- (ii) The competent authority who is empowered to issue quit notice and to make an application to the Magistrate's Court is the Government Agent or any other public officer authorized by the Government Agent.
- (iii) In terms of the Transfer of Powers Act, the term Government Agent would be read as Divisional Secretary.
- (iv) The Divisional Secretary can only delegate his powers under the Act to any other "Public Officer".

- (v) A Chairman of a MPCS is not a person who holds a paid office under the Republic; he is not a public officer, accordingly the Divisional Secretary has no power to delegate his powers under the Act to such a person.
- (vi) The President of the M.P.C.S. had no authority or power to make an application under the State Lands (Recovery of Possession) Act to the Magistrate's Court to obtain an order to evict the appellant.

APPEAL from the Provincial High Court of Anuradhapura

Hemantha Situge with D.D.P. Dassanayake for appellant

G. Liyanage for respondents.

Cur.adv.vult.

June 18, 2001

AMARATUNGA, J.

This is an appeal against the order made by the learned High Court Judge of Anuradhapura in a revision application filed against an order made under the State Lands (Recovery of Possession) Act, No. 7 of 1979 as amended.

The land which is the subject matter in this appeal is a state land given to the Medirigiriya Multi Purpose Cooperative Society (MPCS) for its use. The appellant is an unauthorised occupant of that land. On an application made by the President of the MPCS the learned Magistrate of Hingurakgoda has issued an order of eviction of the appellant from the relevant land. His application to the High Court of Anuradhapura to have the order of the Magistrate revised has been dismissed by the High Court.

The principal argument raised in this appeal was that the relevant land, being a land of the Cooperative Society is not a land falling within the definition of state land within the meaning of the State Lands (Recovery of Possession) Act. However it is quite clear that this is not a land belonging to the MPCS. It is a land owned by the state and given to the MPCS for its use. Therefore the first submission fails.

The competent authority who is empowered to issue quit notice and to make an application to the Magistrate's Court is the Government Agent, an Additional Government Agent, or an Assistant Government Agent of the district in which the land is situated. (Section 18 of the Act). Section 18(1)(gg) inserted by amending Act, No. 50 of 1987 makes 'any other public officer authorized by the Government Agent in respect of any matter or provision of the Act' a competent authority under the Act.

Under section 4 of Transfer of Powers (Divisional Secretaries) Act, No. 52 of 1982 where in any enactment the term Assistant Government Agent occurs, such term shall be read as the Divisional Secretary. In this case the Divisional Secretary of Medirigiriya by writing dated 28.7.1998 has authorised A.M. Dissanayake, President of the Medirigiriya MPCS to exercise all powers and to perform all acts under the State Lands (Recovery of Possession) Act with regard to the state land, a part of which is the subject matter of this appeal. On the authority of this delegation, the President of the MPCS, Medirigiriya has made the application to the Magistrate's Court.

Under Section 18(1)(gg) of the State Lands (Recovery of Possession) Act, a Divisional Secretary can delegate his powers under the Act to "any other public officer." The term public officer has been defined in Article 170 of the Constitution as a person holding a paid office under the Republic. A Chairman of a MPCS is not a person who holds a paid office under the Republic. He is a person who is elected for a term by the members of the cooperative society. Therefore the President of a MPCS is not a public officer and accordingly the Divisional Secretary has no power to delegate his powers under the Act to such a person. The delegation being invalid, all acts done under such purported delegation are also invalid.

Accordingly I hold that the President of the MPCS Medirigiriya had no lawful power or authority to make an application under the State Lands (Recovery of Possession) Act to the Magistrate's Court to obtain an order to evict the appellant. Therefore all action taken or all orders made under such invalid application are null and void and has no force or avail in law. Accordingly I allow the appeal and set aside the order of the High

Court dated 24.05.2000 and the order of the Magistrate, Hingurakgoda dated 3.6.1999 and dismiss the application made by the President, MPCS Medirigiriya dated 30.10.1998 as the Magistrate's Court had no jurisdiction to entertain and act upon the said application. The appellant is entitled to a sum of Rs. 5000/- payable by the MPCS, Medirigiriya.

FERNANDO, J. - I agree.

Application allowed.