

GAMHEWA
v.
MAGGIE NONA AND ANOTHER

COURT OF APPEAL

PALAKIDNAR, J. & WIJEYARATNE, J.

C.A. No. 148/87

A.T. 42/A/15/3/87

JULY 27, 1989.

Agrarian Services – Regulation 13 of the Regulations made by the Minister under s. 66 of the Agrarian Services Act, No. 58 of 1979 – Is Regulation 13(3) ultra vires? – Section 45 of Act No. 58 of 1979 – Minister's power to regulate for appeals.

Gamhewa owned the field called Malambagaha Kumbura and was registered as owner cultivator. Maggie Nona applied for registration as cultivator. The Agrarian Services Committee deleted the name of Gamhewa and inserted the name of Maggie Nona. Gamhewa appealed to the Commissioner of Agrarian Services after the lapse of 30 days of receiving the order – the time limit provided for appeals by Regulation 13(1) of the Regulations made by the Minister of Agricultural Development and Research under s. 66 of the Agrarian Services Act No. 58 of 1979. Gamhewa appealed to the Court of Appeal under Regulation 13(3) and objection was taken that the Regulation 13(3) is ultra vires.

Held –

- (1) Section 66(1) of Act No. 58 of 1979 in its generality empowers the Minister to make regulations in respect of all matters which are stated or required by the Act to be prescribed or for which regulations are required by the Act to be made.
- (2) From a decision of the Agrarian Services Committee, the Minister is empowered to make rules providing for appeals to the Commissioner. The rules grant an appeal to the Commissioner from a decision of the Agrarian Services Committee under s. 45(4)(e) in regard to entries in the Register for Agricultural Lands as required by s. 45(1) of the Act.

There is no further power granted to the Minister to regulate for an appeal to the Appeal Court.

- (3) A right of appeal to the Court of Appeal is contained in s. 5(6) and 9(2) only. Those are not matters pertaining to the Register of Agricultural Lands and entries therein. These appeals are provided by statute, that is, a right under Article 130 of the Constitution whereby the appellate jurisdiction of the Appeal Court is exercised in terms of the provision of any law.
- (4) An appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Regulation 13(3) is ultra vires the enabling powers of the Minister.

Cases referred to:

- (1) *Martin v. Wijewardena* S.C. 1/89 – CA 43/86
- (2) *A.G. v. Sellim* 11 ER 1200

APPEAL from decision of the Commissioner of Agrarian Services.

S. Mahenthiran with D.F.C. Nilanduwa for appellant

K. Balapatabendi with Miss. P.N. Ranawaka for respondent

Asoka de Silva, D.S.G. with Indika Demuni, S.C. as amicus

Cyr. adv. vult.

September 22, 1989.

PALAKIDNAR, J.

Gamhewa owned the paddy field called Malambagaha Kumbura and was duly registered as an owner cultivator in the records of the Ambalantota Agrarian Services Committee, from 1975. Maggie Nona applied for registration as cultivator for the said field for the year 1986. The Agrarian Services Committee deleted the name of Gamhewa and inserted the name of Maggie Nona.

The appellant Gamhewa appealed to the Commissioner of Agrarian Services after 30 days of the order – the time limit provided for by Regulation 13(1) made by the Minister of Agricultural Development and Research under section 66 of the Agrarian Services Act 58 of 1979. The Commissioner rejected the appeal as being out of time. The appellant has appealed to this Court under Regulation 13(3) of the said Regulation.

Regulation 13(3) reads thus:

“The Commissioner shall give notice in writing of the date of hearing of the appeal to the parties concerned and his decision on the appeal subject to an appeal to the Court of Appeal on a question of law shall be final.”

The Counsel for the Respondent raised a preliminary objection to the hearing of this appeal in this Court on the grounds that Regulation 13(3) stated above was ultra vires the powers given to the Minister in so far as it provided for an appeal to this Court; although only on a point of law.

Section 66(1) of Act 58 of 1979 in its generality empowers the Minister to make regulations in respect of all matters which are stated or required by this Act to be prescribed or for which regulations are

required by this Act to be made. The power is clearly defined and vires is given only on matters which are stated or required by this Act to be prescribed.

An appeal to the Commissioner from a decision of the Agrarian Services Committee is granted by the Act under Section 45(4)(e) in regard to entries in the Register for Agricultural Lands as required by section 45(1) of the Act. The Minister is empowered to regulate rules providing for appeals to the Commissioner from the determination of the Agrarian Services Committee on any claims or objection made to such committee.

There is no further power granted to the Minister to regulate for an appeal to this Court. The Act does not provide for an appeal to this Court on matters referred to in section 45 to the Act. Thus the Minister's rule making power was clearly restricted to regulating for appeals to the Commissioner and no further.

Therefore there is validity in the contention that the Minister has acted in excess of his powers in providing for an appeal to this Court under the regulations 13(3).

The learned Counsel for the State (D.S.G.) conceded it was so and did not seek to show that the Minister has acted *intra vires*.

If one were to examine the Agrarian Services Act (58 of 1979) a right of appeal to the Court of Appeal is contained in section 5(6) and 9(2) only. Those are not matters pertaining to the Register of Agricultural Lands and entries therein. These appeals are provided by statute, that is a right under Article 130 of the Constitution of Sri Lanka whereby the appellate jurisdiction of this Court is exercised in terms of the provision of any law.

Article 130 whereby the appellate powers of this court are provided for in the Constitution have been examined by Jameel, J. in *Martin vs Wijeyawardene* (1) Rejecting the contention that there is an unfettered and implied right of appeal in Article 130 of the Constitution to this court Jameel, J. said that an appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Citing Maxwell on Interpretation of Statutes (12 Edn. page 159) he quotes "It is also presumed that a statute does not create new jurisdictions or enlarge existing ones and express language is required if an act is to be interpreted as having this effect". This observation was quoted with approval in the case of *A.G. v. Sellim*

(2) by Westbury J. who went on to say "The criterion of a new right of appeal is plainly an act which requires legislative authority. The court from which it is given and the court to which it is given must be bound and that must be the act of some higher power."

In the light of these views the wording in Article 130 of the Constitution "in terms of the provision of the Constitution or any law" clearly limits the enabling provisions of Article 130 to hear appeals by this court only to such appeals as are granted by the law. Article 170 of the Constitution interprets law to mean an Act of Parliament and any law enacted prior to the Constitution.

The facts of this case reveal there was a delay of three months and two days in communicating the order of the Agrarian Services Committee to this appellant. In considering the objection to this appeal the Commissioner has considered the delay but upheld the objection and rejected this appeal. The party who appeals can only do so after he has received the copy of the order. The time should be computed from that date. Vide 74 N.L.R. 99. It is to be observed that the situation has left the appellant in an unfair position in regard to his rights. The appellant may if he so chooses remedy the situation by resorting to prerogative writ notwithstanding the delay as he would have awaited the outcome of the instant appeal.

In the circumstances, we uphold the objection of the Respondent and hold that the Minister has no power given under the law to regulate for an appeal to this Court and has in doing so acted ultra vires the powers given to him.

We therefore dismiss the appeal with costs fixed at Rs.325/-.

WIJEYARATNE, J. – I agree.

Appeal dismissed.