

WEERASINGHE
v.
PODIMAHATMAYA AND OTHERS

COURT OF APPEAL
W. N. D. PERERA, J.
C.A. 195/89
DECEMBER 11, 1992.

Writs of certiorari and mandamus - Issue of gemming licence - Regulation 8 made under the State Gem Corporation Act - Discretion.

The question which the State Gem Corporation (3rd respondent) had to decide was whether a gemming licence should be issued.

Held:

This had to be done according to Regulation 8 of the Regulations made under the State Gem Corporation Act. Regulation 8 provides that the Corporation may, if it is satisfied that the applicant for a licence has obtained the consent of the owners of more than 2/3 share of co-owned land, issue such a licence. It appears that this is a discretionary power vested in the Corporation. The adjudication of disputed title is not within the purview of the 3rd respondent and a title could be acquired by prescription as by any other means. In refusing to grant a licence to gem on a lot, title to which is disputed it cannot be said that the 3rd respondent has exercised its discretion wrongly.

APPLICATION for writs of certiorari and mandamus.

Gamini Marapana, P.C. with R. Pieris and S. Kulatilleke for petitioner.
L. C. Seneviratne, P.C. with Ronald Perera for 1st and 2nd respondents.
3rd respondent absent and unrepresented.

Cur adv vult.

February 24, 1993.

W. N. D. PERERA, J.

This is an application for a writ of certiorari to quash the decision of the 3rd respondent Corporation conveyed to the petitioner by letter dated 20.1.89, whereby the 3rd respondent has informed the petitioner that after an inquiry that had been held into the application of the petitioner for a gemming license in respect of lots 1 and 2 of a particular land it had been decided that while a gemming license could be issued to the petitioner in respect of lot 1, a gemming license could not be issued to him in respect of lot 2 until a determination of the ownership thereof by a competent court. In his application the petitioner has also asked for a writ of mandamus compelling the 3rd respondent Corporation to issue a license for the purpose of gemming on lot 2. The said land and the two lots 1 and 2 are depicted in Plan No. 155 dated 22.11.1957.

The petitioner claims that he had acquired the leasehold rights of a 3/4th share of the land described as lots 1 and 2 in the aforesaid plan. He has also obtained the consent of co-owners who own 5/24th shares in the land to gem on this land. The 1st and 2nd respondents while not disputing his application for a gemming license in respect of lot 1 of the said land, in respect of lot 2 resisted this application on the basis that their father Kirimenike had asweddurnised the said lot 2 and had acquired a prescriptive title thereto which had devolved on them.

Learned Presidents Counsel who appeared for the petitioner contended that inasmuch as the paper title on which the petitioner relied on had been admitted by the respondents to a share of the entire land exceeding 2/3, the 3rd respondent was under a duty to issue him licenses in respect of both lots 1 and 2 of the said land.

Learned President's Counsel who appeared for the 1st and 2nd respondents however contended that inasmuch as the 1st and 2nd respondents who were admittedly co-owners of the entire land in question had claimed to have succeeded to the prescriptive title claimed to have been acquired by their father who was had himself been a co-owner of the land, to the entirety of lot 2, the

3rd respondent had acted correctly under the Regulations made under the State Gem Corporation Act in refusing to grant to the petitioner a license for gemming in lot 2 as such grant was opposed by the 1st and 2nd respondents.

Counsel for the petitioner as well as Counsel for the respondents agreed at the hearing of this application that an inquiry into the objection taken to the grant of a license in respect of lot 2 was duly held in accordance with the Regulations made under the Act, and that although the proceedings at this inquiry had not been made available to this Court by the third respondent, they were willing to accept the position stated by the 3rd respondent in the aforesaid letter that the refusal to issue a license was due to the fact that the 1st and 2nd respondents claimed that prescriptive title to the entirety of lot 2 had been acquired by their father and that this title had devolved on them, and that they objected to the issue of a license to the petitioner in respect of lot 2. Learned Counsel for the petitioner however contended that in any event no prescriptive title had been acquired by Kirimenike according to the averments set out in the petition. He further contended that if the respondents were claiming such a prescriptive title, the burden was on them to establish such a title in a court of law.

It is undoubtedly correct that the burden of proving ouster among co-owners rests on the party claiming such ouster in a duly constituted action. But the question before the 3rd respondent at the inquiry was to decide on the issue of a gemming license in accordance with the regulations. Regulation 8 made under the Act provides that the Corporation may, if it is satisfied that the applicant for a license has obtained the consent of the owners of more than 2/3 share of co-owned land issue such a license. It appears that this is a discretionary power vested in the Corporation. The question before this court, therefore, is whether this power has been exercised within justifiable limits. Learned President's Counsel who appeared for the petitioner contended that if the corporation was permitted to refuse licenses on such grounds, the door would be open for any person who wished to obstruct the grant of a license to merely put forward an alleged prescriptive right to an appropriate share of the land to attain the object he sought. He further argued that the 3rd

respondent should have, on the admission of the respondents of the paper title in the petitioner, allowed the grant of the permit to both lots and left the respondents to vindicate their alleged title if they so desired.

The discretion vested in the Corporation to reject an entirely frivolous claim and an objection based thereon may no doubt be deemed to exist, as otherwise the grant of licenses may be seriously impeded. But on the facts of the instant case, as the respondents were themselves co-owners who claimed ouster of the other co-owners who had granted their consent and also to be in possession of lot 2, it cannot be said that the 3rd respondent has exercised its discretion wrongly. The adjudication of disputed title is not within its purview and a title could be acquired by prescription as by any other means. I therefore dismiss this application with costs.

Application dismissed.
