FAROOK v. GUNEWARDENE, GOVERNMENT AGENT, AMPARAI

COURT OF APPEAL
C.A. APPLICATION 65/80
ABDUL CADER, J. & L. H. DE ALWIS, J.
AUGUST 4, 1980.

State Land (Recovery of Possession) Act, No. 7 of 1979, sections 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 and 17 – Natural Justice.

The petitioner complained that the land in question was not state land but private land of which he was in possession on deeds ranging from years 1934-1967 and that he was not given an opportunity of placing those facts before the Government Agent prior to the notice to quit being served on him, which he alleged amounted to a violation of natural justice and the principle of *audi alteram partem.*

Held:

When the legislature made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process specified in the Act itself, it is not open for the court to grant relief on the ground that the petitioner had not been heard.

Case referred to:

(1) *University of Ceylon* v. *E. F. W. Fernando (Privy Council)* 61 NLR 505.

APPLICATION for Writs of Certiorari and Mandamus.

M. S. M. Nazim with *M. Farook Thahir* for the petitioner.

Ameer Ismail, S.S.C. with *A. Wijewardene,* S.C. for respondent.

Cur adv vult.

13th November, 1980.
ABDUL CADER, J.

By notice marked P1 Government Agent, Amparai, the respondent to this petition, who was the competent authority for the purpose of the State Land (Recovery of Possession) Act, No. 7 of 1979, issued a quit notice on the petitioner to quit the land described in the schedule to P1 which was according to the respondent state land and on the failure of the petitioner to quit the land, instituted proceedings in the Magistrate's Court of Kalmunai for the recovery of the said land.

The petitioner did not deny that the said notice P1 was served on him.

The petitioner complains that the land in question is not a state land and that he has been in possession of that land on deeds

ranging from 1834 to 1967. It has been the subject matter of proceedings for transfer of title and possession in the Magistrate's Court of Kalmunai, and is, a private and not a state land; that he was not given an opportunity of placing these facts before the Government Agent before a quit notice was served on him which was a violation of natural justice and that the respondent took action in a unilateral, arbitrary and pre-determined manner. State Counsel contested the requirement of any inquiry by the Government Agent and submitted that the only inquiry that was contemplated by this Act was one before the Magistrate under section 9 of the Act and, therefore, this application should be dismissed.

Counsel for the petitioner cited various authorities in support of his proposition, particularly the Privy Council Case of the *University of Ceylon v. E. F. W. Fernando.*[1] Since the question of natural justice and the principle of *audi alteram partem* were very much in issue, we postponed the order in this case until after the Supreme Court decision in the G. P. A. Silva Commission case was known. Now that the judgment has been delivered, we find that the judgment is of no assistance to decide the principles involved in this case. Meanwhile, another bench of this Court on 8th September, 1980, on 1755/79 adopted a statement from the *Law of Writs and Fundamental Rights* by Chaudhuri, 2nd Edition, Volume II, p. 701 which reads as follows:–

> "It is not correct to state that the party adversely affected should be heard at each and every stage of the administrative process. There is no such general requirement in the principle of *audi alteram partem.* The principle is satisfied if the party adversely affected is given sufficient opportunity to know the case he has to meet and to answer that case at some stage and not at all stages of the administrative proceedings."....

and went on to hold that the contention of the learned Counsel for the petitioner that the petitioner ought to have been heard by the Government Agent before notice was issued in terms of section (3) of the Act, was untenable.

The facts in that case are different from the facts in this case. In that case, the petitioner went into occupation of Crown land on a permit issued by the Government Agent under the Crown Lands Ordinance and that permit contained conditions, *inter alia,* that it was valid for one year unless renewed and it was liable to be terminated by the Government Agent. The facts in this case are totally different from the facts in that case. In this case, the origin of the plaintiff's possession is by virtue of title deeds which are set out in

paragraph 2 of the petition and, therefore, it cannot be said that there had been any admissions on the part of petitioner that the land in suit is a state land. In fact the complaint of the plaintiff in this case is that he has not been given an opportunity to establish before the Government Agent that the land in suit is not a state land, but a private land. Therefore, I do not think that that case can be of assistance to the State in this case.

In the Privy Council case referred to, it was stated "in general the requirement of natural justice are, first, that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case and thirdly that the tribunal should act in good faith." Adopting these three requirements for the purpose of the petitioner's complaint, the petitioner has not been given an opportunity to state his case to the Government Agent before the Government Agent instituted proceedings in the Magistrate's Court. At the inquiry before the Magistrate, the only plea by way of defence that the petitioner can put forward is "that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid." Section 9(2) is to the effect that the Magistrate cannot call for any evidence from the competent authority in support of the application under section 5, which means that the Magistrate cannot call upon the competent authority to prove that the land described in the schedule to the application is a State land (Section 5(1)(a)(ii)). Therefore, the petitioner will not have an opportunity of raising the question whether the land is a State or private land before the Magistrate. Adopting the requirements set out in the Privy Council case, the requirement that the petitioner should be given an opportunity to state his case will not be met. Therefore, the petitioner's submissions need careful consideration.

On an analysis of Act, No. 7 of 1979 and the Privy Council case, there appears to be a substantial distinction between the two. In that case, the decision of the Vice Chancellor was final and would have prevented a student from sitting for the examination for the period prescribed by the Vice Chancellor without any other relief whatsoever. That section requires the Vice Chancellor to "satisfy himself of the truth or falsity of a given allegation" and the Vice Chancellor's function under that clause was admitted to be quasi-judicial. On the other hand, section 3(1) of Act, No. 7 of 1979 reads as follows:–

> "Where a competent authority is **of opinion** that any person is in unauthorized possession or occupation of any State land the

competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependents, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice."

Therefore, it would appear that the functions of the competent authority is not quasi-judicial, but administrative. It is significant that section 15 protects the competent authority.

The structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion. Alternate relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against the State for the vindication of his title within 6 months from the date of the order of ejectment and section 13 is to the effect that where action is instituted by a person, if a decision is made in favour of that person, he will be entitled to recover reasonable compensation for the damage sustained by reason of his having been compelled to deliver possession of such land.

It is significant that there is no provision in these two sections to place the person ejected in possession of the land when the action has been decided in favour of the person ejected, even though that person has vindicated his title to the land. It appears, therefore, that the intention of th Legislature was that once the competent authority had decided that any land was State land even after the person claiming to be the owner vindicates his title to the land, he was not to be restored to possession of the land, but only entitled to recover reasonable compensation for the damage sustained including the value of the land by reason of his having been compelled to deliver up possession of such a land.

Urgency appears to be the hallmark of this Act. Under section 3, 30 days notice shall be given. Under section 4, the person in possession is not entitled to object to notice on any ground whatsoever except as provided for in section 9 and the person who is in possession is required to **vacate the land within the month** specified by the notice. Under section 6 the Magistrate is required to

issue summons forthwith to appear and show cause on a date not **later than two weeks** from the date of issue of such summons. Under section 8(2) the Magistrate is required to give priority over all state business of that court. Under section 9, the party noticed can raise objections only on the basis of a valid permit issued by the State. Under section 10, if the Magistrate is not satisfied, "he shall make order directing **ejectment forthwith** and no appeal shall lie against the order of ejectment. Under section 17, the provisions of this Act have effect notwithstanding anything contained in any written law.

When the Legislature has made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process described in the Act itself, it is not for this Court to grant relief on the ground that the petitioner has not been heard. Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land.

This application is therefore dismissed with costs.

L. H. DE ALWIS, J. – I agree.

Application dismissed.