

LOKU BANDA
v.
UKKU BANDA

SUPREME COURT

SHARVANANDA, J., VICTOR PERERA, J., AND SOZA, J.

S.C. 50/80 - C.A. 49/78, M.C. MAWANELLA 4287

SEPTEMBER 3, 1982

Administration of Justice Law, Sections 62, 63 – Ande rights protected by Agricultural Lands Law – Magistrate's duties when breach of peace is threatened over dispute as to possession rights.

Rasnekkumbura belonged in equal shares to Loku Banda, Ukku Banda and Warsakone. Loku Banda was an ande cultivator of Ukku Banda's lot. Disagreement arose and the matter was referred to the Conciliation Board. All three agreed to a survey and by survey Plan No. 1016 Lot 1 was allotted to Ukku Banda, Lot 2 to Warsakone and Lot 3 to Loku Banda.

On 1.4.76 Ukku Banda cultivated his land but was dispossessed by Loku Banda on 2.4.76. On 8.4.76 Loku Banda was ousted.

The Magistrate inquired into the matter and declared that Loku Banda was entitled to cultivate Lot 1 as ande cultivator while Ukku Banda was entitled to receive his landlord's share until a judgment was given by a competent Court.

The Court of Appeal reversed the Magistrate's Order on the footing that the right to cultivate was an aspect of possession.

Held -

1. That the right to cultivate can vest in a person different from the person who has the right to possession.
2. What the Magistrate had to decide was who was entitled to the right to cultivate.
3. The Magistrate's finding that Loku Banda had an ande right to cultivate Lot 1 was correct as ande rights are protected by the Agricultural Lands Law and therefore not wiped out by the certificate of the Conciliation Board.

Case referred to:

(1) *Kanagasabai v. Mylvaganam* (1976) 78 NLR 280.

APPEAL from judgment of Court of Appeal:

Sanath Jayatilake for appellant.

Petitioner-respondent absent and unrepresented.

2nd respondent absent and unrepresented.

Cur. adv. vult.

October 27, 1982

SOZA, J.

This appeal raises an important question relating to the interpretation and application of the provisions of sections 62 and 63 of the Administration of Justice Law No.44 of 1973 (now replaced by sections 66 to 72, 74 and 75 of the Primary Courts' Procedure Act No.44 of 1979) where Magistrates were called upon to deal with disputes affecting land which are likely to cause a breach of the peace and where only the right to cultivate is in issue.

In the case before us the dispute concerned the right of one Loku Banda the appellant before us to cultivate the one-third portion of the paddy field called Rasnekkumbura alias Dettapathe Kumbura belonging to M.V. Ukku Banda the first respondent. The whole field called Rasnekkumbura alias Dettapathe Kumbura belonged in equal shares to the said Loku Banda, Ukku Banda and one Warsakone. Loku Banda claimed the right to cultivate not only his own one-third share but also Ukku Banda's one-third share as an de cultivator. Disagreement arose among the three owners and the matter was referred to the Conciliation Board of the area. At the inquiry which the Board held on 17.1.1975 the three co-owners agreed that the field be surveyed and divided into three lots and that each of them would work and from then on possess his separate lot. The Sinhalese words used in the certificate of the Conciliation Board (1D2) are "පාර්ශ්වකරුවන්ට පැවරෙන කොටස් වැඩකර මෙතැන් සිට භුක්ති විදීමටත් පාර්ශ්වකරුවන් එකඟ වූහ." The field was accordingly surveyed by surveyor M.B. Ranatunga and divided into three equal lots on 13.3.1976 and 9.4.1976. The three lots were depicted in Ranatunga's plan No.1016 which though marked 1D1 in the proceedings before the Magistrate is not before us. Ukku Banda was allotted Lot 1, Warsakone Lot 2 and Loku Banka Lot 3 in the said plan. Upon the division being made Ukku Banda began to cultivate Lot No.1 but Loku Banda lost no time in claiming his rights to be the an de

cultivator of the same Lot. The dispute led to complaints to the Police being lodged by both Loku Banda and Ukku Banda and the Officer in Charge of the Aranayake Police Station who is the 2nd respondent before us filing an information on 7.5.1976 relating to the dispute before the Magistrate of Mawanella.

At the inquiry before the Magistrate Loku Banda contended that at no stage had he surrendered his ande rights and to establish the existence of these rights he produced convincing proofs. He claimed the right to cultivate Lot No.1 which had been allotted to Ukku Banda at the division concluded on 1.4.1976 and he maintained that he had in fact cultivated this Lot from 2.4.1976 till 8.4.1976 when he was obstructed by Ukku Banda. Ukku Banda relied on the settlement entered before the Conciliation Board in terms of which he claimed he was entitled to cultivate and possess Lot 1 and he said he had in fact entered into possession of it on 1.4.1976 and begun to cultivate it when on 2.4.1976 he was disturbed by Loku Banda.

The learned Magistrate inquired into the matter and by his order dated 9.11.1977 for which he gave his reasons on 23.11.1977 declared that Loku Banda was entitled to cultivate Lot 1 as ande cultivator while Ukku Banda was entitled to receive his landlord's share of the income of Lot 1. Ukku Banda was ordered not to obstruct Loku Banda from cultivating Lot 1 until the tenancy rights pertaining to this Lot were resolved in the appropriate forum. The learned Magistrate felt that no question of the wiping out of the ande rights of Loku Banda had arisen before the Conciliation Board. Indeed such a question could only be dealt with under the provisions of the Agricultural Lands Law No.42 of 1973 by the institutions referred to there.

It is beyond question that the rights of an ande cultivator are, except in the limited circumstances referred to in the Agricultural Lands Law, virtually unassailable and inalienable. Further the proceedings before the Conciliation Board do not show that Loku Banda expressly waived his ande rights. A landlord can work and possess a field through his cultivator. Hence the words "work" (වැඩකර) and "possess" (අත්වි) used in the settlement before the Conciliation Board do not necessarily imply that Loku Banda waived his ande rights. The ande rights which Loku Banda had, attached to the soil rights of Ukku Banda. So at the partition which the co-owners effected those ande rights attach themselves to the particular Lot, here Lot 1, which Ukku Banda was awarded. In these circumstances

the view of the Court of Appeal that the agreement for Ukku Banda to work and possess Lot 1 wiped out the rights Loku Banda had to cultivate it in the exercise of his ande rights, is not supportable.

The legal provisions under which the Magistrate could have acted are set out particularly in sections 62 and 63 of the Administration of Justice Law No.44 of 1973. The Magistrate has jurisdiction to act under those sections when the existence of a dispute affecting any land situated within his territorial jurisdiction and likely to cause a breach of the peace is reported. The expression "dispute affecting land" according to s.62(4) of the Administration of Justice Law includes, any, dispute:

- (a) as to the right to possession of any land, or part of a land, or
- (b) as to the boundaries of any land or part of a land, or
- (c) as to the right to cultivate any land or part of a land, or
- (d) as to the right to the crops or produce of any land or part of a land, or
- (e) as to any right in the nature of a servitude affecting the land.

The definition is not exhaustive. Subsections 1,2,3 and 4 of section 63 apply when the dispute relates to the right to possession of any land or any part of a land, that is, a dispute falling under (a) above. Subsections 5 and 6 of this section apply when the dispute relates to any right to any land or any part of a land other than the right to possession of such land or part, that is, a dispute falling under (b) to (e) above.

The Court of Appeal proceeded on the footing that the right to cultivate is an aspect of possession which cannot be dissociated from possession. As a general proposition this is not invariably true. The right to cultivate can vest in a person different from the person who has the right to possession. The statute itself recognises this distinction and has spelt out provisions for disputes relating to possession of a land or part of a land which are different from the provisions relating to rights in a land or part of a land other than the right to possession. When the dispute relates to possession the Magistrate must determine who was in possession on the date when he issued notice on his having reason to believe that there was in existence a dispute affecting land and likely to cause a breach of the peace or within two months prior to the issue of such notice where a forcible dispossession has occurred. The order which the Magistrate then makes will declare which of the disputants is entitled to possession and prohibit all disturbance to his possession until he is evicted under the judgment,

order or decree of a competent court. Where there has been forcible dispossession within the period of two months prior to the date of the issue of notice the Magistrate may in addition to such declaration and prohibition, direct that the party specified in his order be restored to possession. When the dispute relates to possession, the Magistrate may make his determination without reference to the merits of the rival claims of the parties – see the proviso to subsection 7 of section 63.

Where the dispute relates to any right to any land or part of a land other than the right to possession, the Magistrate will declare that the person named in his order is entitled to the disputed right until he is deprived of it by virtue of the judgment of a competent court and prohibit all disturbance or interference with the exercise of such right other than under the authority of such judgment. The proviso to subsection 7 of section 63 does not apply here. Hence by implication the Magistrate would have to consider the merits of the rival claims in deciding who is entitled to the disputed right. This he will do on the basis of the material before him. The order which the Magistrate makes may also contain directions as to the exercise of the right or the sale of the crop or produce and as to the custody and disposal of the proceeds of such sale. It is significant that when the order of the Magistrate relates to the right to possession it could be made without reference to the merits of the claims of the disputants and it is operative until eviction is ordered by the *judgment, order or decree* of a competent Court whereas when it relates to any other right it must be made after consideration of the merits of the rival claims on the basis of the statements of the rival parties and such evidence as may have been admitted by the Magistrate in his discretion and his order is operative until deprivation of that right by a *judgment* of a competent Court. The omission of the words “order or decree” is not without significance – see subsections 2 and 6 of s.63. Here I would like to add that I reserve my opinion as to whether a competent civil court cannot by an interim injunction or order appointing a receiver, direct the eviction of the person secured or put in possession by the Magistrate as we did not hear argument on the question.

It is clear then that the approach prescribed by the statute when the dispute relates to the possession of a land or part of a land is different from the approach prescribed when the dispute relates to a right other than the right to possession. Therefore it would not be correct to treat the right to cultivate as an aspect of the right to possession for the purposes of the application of the provisions of

section 63. The decision of Sharvananda, J. in *Kanagasabai v Mylvaganam*: (1) on which reliance appears to have been placed by the Court of Appeal would not be applicable to the instant case because that was a case where the subject of the dispute was the right to possession of a land – business premises to be exact.

Given that here was a dispute affecting land which was likely to cause a breach of the peace, all that the learned Magistrate was called upon to do in the instant case was to decide who was entitled to the right to cultivate the disputed Lot. The evidence strongly supports the Magistrate's finding that Loku Banda was the ande cultivator of Ukku Banda's share and was entitled to the right to cultivate it and that after the division these ande rights attached to the disputed Lot 1. The reference to working and possessing the field in the certificate 1D2 of the Conciliation Board cannot wipe out the ande rights of Loku Banda which are under the statutory protection of the provisions of the Agricultural Lands Law.

The appeal is therefore allowed and the judgment of the Court of Appeal is set aside and the order of the Magistrate restored. In view of the circumstances under which the present dispute arose I award no costs.

SHARVANANDA, J. – I agree.

VICTOR PERERA, J. – I agree.

Appeal allowed.