

WICKREMANAYAKA AND ANOTHER
v.
JAYASEKERA & ANOTHER

COURT OF APPEAL
AMARATUNGA, J.
CA NO. 1299/2000
JUNE 21, 2001

Agrarian Services Act, No. 52 of 1979 – Amended by Act No. 4 of 1991 – S. 16, 16 A (1), 17 (6), 18, 18 (2), 18 (3) – Cultivator wilfully neglecting to cultivate – Inquiry – Liability to pay rent – Consequences of failure to pay? Forfeiture – Deeming provisions.

The 2nd petitioner made a complaint under section 16A of the Amending Act No. 4 of 1991, alleging that the tenant cultivator had neglected to cultivate the paddy-field in question. After inquiry the tenant cultivator was directed by the Inquiring Officer as he has wilfully neglected to cultivate the field, to pay 12 bushels of paddy valued at Rs. 2,400 as arrears of rent. The Inquiring Officer had also in his directive has stated that, if he failed to pay the said sum his tenancy rights would be forfeited. In response to this directive, the tenant cultivator made a part payment and failed to pay the full sum ordered.

Thereafter, the Inquiring Officer cancelled that part of the order, which stated that if the sum is not paid the tenancy would be forfeited.

The petitioner sought a writ of *Certiorari* to quash that directive.

Held:

- (1) Although section 16A (1) makes the cultivator liable to pay rent in respect of a season in which he wilfully neglects to cultivate, the section has not set out the consequences of failure to pay the rent payable under the Order under section 16A (1). Accordingly, one has to turn to section 18 of the Act, which sets out the consequences of failure to pay arrears of rent.
- (2) Section 18 (1) is applicable only to a situation where the tenant cultivator has failed to pay arrears of rent under that section.

- (3) It has no application to a situation where the cultivator has failed to pay arrears of rent payable under section 16A (1) for wilfully neglecting to cultivate the field.
- (4) Failure to pay arrears of rent payable under section 16 (1) will attract consequences set out in section 18 (2), while section 18 (1) is limited in its application to the specific situation set out in the section itself. Section 18 (2) has no such limitation and is therefore applicable to a situation where the cultivator has failed to pay arrears of rent under s. 16 (A).

Per Amaratunga, J.

“Under section 18 (1) the Commissioner shall give notice in writing to the tenant cultivator that his tenancy, would be terminated but under section 18 (2) A tenant cultivator who fails to pay the arrears shall be deemed to have forfeited his tenancy.

- (5) When the tenant cultivator fails to pay arrears of rent, before the specified date, by virtue of the use of the word ‘deemed’ in section 18 (2) he becomes a person who has forfeited his tenancy.
- (6) The Commissioner has no power or jurisdiction to cancel, vary or alter the legal position. An act or an order by the Commissioner is not required to complete forfeiture as it has already taken place by operation of law.

APPLICATION for a Writ of *Certiorari / Mandamus*.

Case referred to :

Jinawathie v. Emalin – 1986 2 Sri LR 121 at 130-131.

Douglas Premaratne, PC with *Ms. Priyadharashani Dias* for the petitioner.

Respondents absent and unrepresented.

Cur. adv. vult.

October 26, 2001

GAMINI AMARATUNGA, J.

The 1st petitioner (the landlord) is the owner of a paddy land called Thalghawila Ihala Kumbura, one acre and two roods in extent situated in Ihala Millawa in the District of Kalutara. The 3rd respondent was the tenant cultivator of the said paddy land. The 2nd petitioner who

is the son of the landlord is the person authorised by the landlord to act on his behalf in all matters connected with the said paddy-field. Till about June, 1998, the landlord received his share of paddy from the field cultivated by the tenant cultivator.

The 2nd petitioner by letter dated 17. 06. 1999 has made a complaint in terms of section 16A of the Agrarian Services Act, No. 52 of 1979 as amended by Act No. 4 of 1991 to the 1st respondent Deputy Commissioner of Agrarian Services alleging that the tenant cultivator had failed and neglected to cultivate the said Thalгахawila Ihala Kumbura during the yala season in 1998. The 1st respondent has caused an inquiry to be made by the 2nd respondent about the complaint of the 2nd petitioner. The 2nd respondent had held an inquiry on 30. 10. 1999, bearing No. K/IC/142/99. The tenant cultivator has attended the inquiry and has given evidence on his own behalf.

At the conclusion of the inquiry the 2nd respondent has decided that the tenant cultivator had wilfully failed and neglected to cultivate the said paddy-field during the yala season of 1998 when cultivation was in fact possible. Accordingly, he has held that the tenant cultivator was liable to pay 12 bushels of paddy, valued at Rs. 2,400 to the landlord as arrears of rent for the yala season, 1998. On the findings of the Inquiry Officer the 1st respondent, by letter dated 29. 11. 1999 (P5), has ordered the tenant cultivator to pay Rs. 2,400 to the landlord on or before 31. 12. 1999. By paragraph 4 of the same letter the 1st respondent has informed the tenant cultivator that if he failed to pay the said sum on or before the specified date his tenancy rights in the relevant paddy-field would be forfeited. In response to the direction of the 1st respondent the tenant cultivator has paid Rs. 1,200 to the Kananvila Agrarian Services Committee on 17. 12. 1999 as part payment of the rent payable by him to the landlord but he has failed to pay the balance sum of Rs. 1,200 on or before 31. 12. 1999.

Thereafter, the 1st respondent by his letter dated 01. 08. 2000 (P9) addressed to the tenant cultivator with a copy to the landlord, has cancelled paragraph 4 of his earlier letter dated 29. 11. 1999.

The said paragraph 4 was the paragraph which referred to the **forfeiture of tenancy rights on failure to pay arrears of rent.** ⁴⁰ The landlord by letter dated 15. 08. 2000, sent through his Attorney-at-Law, has protested against the cancellation of the contents of the said paragraph 4. In response to this letter, the 1st respondent by letter 23. 08. 2000 has informed the Attorney-at-Law that he had sought instructions from the Head Office regarding this matter and once instructions are received he would communicate with him. Thereafter, there was no communication from the 1st respondent upto the time of filing this application on 24. 11. 2000.

By this application the petitioners seek a writ of *Certiorari* to quash ⁵⁰ the decision (cancelling paragraph 4 of the letter dated 29. 11. 1999 (P5)) contained in letter marked P9 dated 01. 08. 2000 and for a *Writ of Mandamus* compelling the first respondent to take steps to evict the tenant cultivator from the relevant paddy land.

After notice was issued on the respondents counsel appearing for 1st and 2nd respondents obtained time from this Court to file objections, but no objections were filed thereafter. The 3rd respondent never appeared in this Court.

In terms of section 16A of the Agrarian Services Act, inserted by Agrarian Services (Amendment) Act No. 4 of 1991, where the landlord ⁶⁰ of any extent of paddy land informs the Commissioner in writing that the tenant cultivator of such paddy land has wilfully neglected to cultivate such extent with any crop during any paddy cultivating season in which cultivation is possible, the Commissioner has to cause an inquiry to be made by an Inquiry Officer on the complaint of the landlord. If the Inquiry Officer, after inquiry, holds that the tenant cultivator has wilfully neglected to cultivate the paddy land, the tenant

cultivator is liable to pay the landlord rent for such extent for the relevant season determined in terms of section 17 (6) of the Agrarian Services Act. The Inquiry Officer has determined the rent payable in paddy to the landlord by the tenant cultivator and has computed its money value as stipulated in section 17 (6) of the Agrarian Services Act. The Inquiry Officer has ordered the tenant cultivator to pay Rs. 2,400 to the landlord as arrears of rent payable for the yala season of 1998. Although section 16A (1) makes the tenant cultivator liable to pay rent in respect of a season in which he has wilfully neglected to cultivate the land, the section does not set out the consequences of failure to pay the rent payable upon the order made under section 16A (1). 70

Accordingly, one has to turn to section 18 of the Agrarian Services Act which sets out the consequences of failure to pay arrears of rent by the tenant cultivator. 80

Section 18 (1) of the Agrarian Services Act as amended by Act No. 4 of 1991 is applicable only to a situation where the tenant cultivator has failed to pay arrears of rent payable upon an order made in terms of that section upon a complaint made by the landlord that the tenant cultivator was in arrears of rent. It has no application to a situation where the tenant cultivator has failed to pay the arrears of rent payable by him under section 16A (1) for wilfully neglecting to cultivate the land. The failure to pay arrears of rent payable under section 16A (1) therefore will attract the consequences set out in section 18 (2) of the Agrarian Services Act which reads as follows : 90

“A tenant cultivator who fails to pay arrears of rent within the time specified therefor shall be deemed to have forfeited his tenancy and shall vacate such extent on being ordered to do so by the Commissioner.”

Thus, it is clear that while section 18 (1) is limited in its application to the specific situation set out in the section itself, section 18 (2) has no such limitation and is therefore applicable to a situation where the tenant cultivator has failed to pay arrears of rent payable under section 16A (1) of the Agrarian Services Act. When section 18 (1) is compared with section 18 (2) a significant difference between the two sections becomes apparent at once. According to section 18 (1), when the Inquiry Officer holds that the rent is in arrears and communicates his decision to the Commissioner, the Commissioner shall give notice in writing to the tenant cultivator that *his tenancy* in respect of such extent *would be terminated* if he fails to pay such arrears within the time specified in such notice (*emphasis added*). On the other hand section 18 (2) enacts that a tenant cultivator who fails to pay the arrears of rent within the time specified therefor *shall be deemed to have forfeited his tenancy.* (*emphasis added*).

What is the significance of this difference in terms of legal consequences? In order to find the answer one has to consider the legal effect of the words "deemed to have" used in section 18 (2).

The meaning and the effect of the word 'deemed' was considered and explained by Ranasinghe, J. (as he then was) in *Jinawathie v. Emalin*⁽¹⁾ at 130-131. Ranasinghe, J. stated that : "In statutes the expression deemed is commonly used for the purpose of creating a statutory function so that a meaning of a term is extended to a subject-matter which it properly does not designate . . . Thus, where a person is "deemed to be something" it only means that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were". It is thus clear that the word deemed is used to extend the meaning of a word to create an imaginary state of affairs which in reality does not exist.

Ranasinghe, J. went onto explain the legal effect and the consequences of such a legal fiction in the following terms : "Thus, where in pursuance of a statutory direction a thing has to be treated

as something which in reality it is not or an imaginary state of affairs 130
is to be treated as real, then not only will it have to be treated so
during the entire course of the proceeding in which such assumption
is made, but all the attendant consequences and incidents, which if
the imagined state of affairs had existed would inevitably have flowed
from it have also to be imagined or treated as real." (p 130).

From what has been stated above it is clear that although the
tenant cultivator has not in reality forfeited his tenancy rights, the
legal fiction created by the use of the word 'deemed' in section 18
(2) has the effect of treating the tenant cultivator as a person who
has in reality forfeited his tenancy. 140

Forfeiture of a right or a thing may take place in one of two ways.
It may happen as a result of a positive act or an order. For instance,
if a law says that a thing is liable to be forfeited on an order of
the convicting Magistrate, a specific order directing the forfeiture of
the thing is necessary to forfeit the thing. On the other hand forfeiture
can also arise by operation of law. For instance, if the law says that
'upon the conviction of the offender all property he has acquired by
his unlawful acts shall stand forfeited to the State' no separate act
or an order is necessary to bring about forfeiture. Upon the happening
of one event, namely the conviction of the offender, forfeiture will 150
automatically take place by operation of law.

In section 18 (1) of the Agrarian Services Act the words 'that his
tenancy . . . would be terminated' indicate that a separate act or an
order is necessary to terminate tenancy rights.

By contrast under section 18 (2) when the tenant cultivator has
failed to pay the arrears of rent, he shall be deemed to have forfeited
his tenancy. This happens by operation of law. When the tenant
cultivator fails to pay arrears of rent before the specified date, by virtue
of the use of the word 'deemed' in section 18 (2), he becomes, for
the purposes of law, a person who has forfeited his tenancy. An 160

act or an order by the Commissioner is not required to complete forfeiture as it has already taken place by operation law. Once tenancy is forfeited by operation of law, the Commissioner has no power of jurisdiction to cancel, vary or alter the legal position. Accordingly, the 1st respondent's letter dated 01. 08. 2000 (P9) by which he sought to cancel paragraph 4 of his letter dated 29. 11. 1999 (P5) is a document purporting to convey a decision which he has no power or jurisdiction make. It is a nullity, and is liable to be quashed by a Writ of *Certiorari*. Accordingly, I direct that a mandate in the nature of a Writ of *Certiorari* be issued quashing the decision conveyed by 170 the 1st respondent's letter dated 01. 08. 2000 (P9).

Under section 18 (2), a tenant cultivator who is deemed to have forfeited his tenancy shall vacate such extent of land on being ordered to do so by the Commissioner.

If the tenant cultivator fails to vacate the land on the order of the Commissioner, the Commissioner has to take action under section 18 (3) to evict the tenant cultivator from the relevant paddy land.

Accordingly, I issue a Writ of *Mandamus* directing the 1st respondent Deputy Commissioner of Agrarian Services to take all steps necessary under sections 18 (2) and 18 (3) of the Agrarian Services Act, to 180 evict the 3rd respondent S. Nomis Singho from the paddy land called Thalagahawila Ihala Kumbura belonging to the 1st petitioner. In the circumstances of this case I make no order for costs.

Application allowed.