INDRANI
v.
PATHIRANA AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. AND
WIJAYARATNE, J.
CA 1011/98
AUGUST 2, 2002

Agrarian Services Act, sections 9, 16A and S17(5) – Rent not paid – Inquiry – Cultivator dies – Substitution – Inquiry officer biased? – Legal provision as to liability – Tenant cultivator – Suceeding tenant.

The 3rd respondent commenced inquiries into a complaint made against one 'M' the tenant cultivator on the ground that 'M' had not paid rent for two seasons. Upon the death of 'M' the petitioner was substituted in terms of section 9.

The petitioner sought that inquiry be held by an officer other than the 3rd respondent, alleging bias. This was not allowed. The petitioner thereafter having protested over the 3rd respondent continuing with the inquiry walked away from the inquiry. The matter thereafter was taken *ex-parte* and findings were made against the petitioner.

The petitioner sought to challenge the order on the ground of bias, illegality and proceedings being *ultra vires* the powers of the 3rd respondent.

Held

(i) Perusal of the proceedings and findings, reveals a clear manifestation of bias on the part of the Inquiring Officer. What is apparent from such comments is that the Inquiring Officer has considered the general conduct and the character of the substituted respondent rather than the act in issue, namely, the default or neglect on the part of the tenant cultivator.

(ii) The 3rd respondent has not made any finding or determination whether the tenant cultivator 'M', neglected the cultivation as to reduce the yield, but had merely gone on the complaints. There is no finding of the extent cultivated and the yield obtained, nor is there a comparison of the yield with the yield of other fields in the area. This amounts to failure to comply with the requirements of the law.

(iii) The alleged default and neglect is on the part of 'M' who died several years before the impugned decision was made. There is a rational basis, justification or legal provision empowering the respondents to terminate the tenancy of a cultivator even on proved default and neglect of another cultivator, whatever the relationship. There is no legal provision extending the liability to be terminated as the tenant cultivator to a succeeding tenant cultivator determined under section 9.

APPLICATION for writs in the nature of certiorari and prohibition.

Cases referred to:

1. *Martin Singho* v *Kularatne* – CA 248/95
2. *Karavita* v *Abeyratne* – (1983) 2 Sri LR 306

Ananda Kasthuriarachchi with Udenika Abeysiriwardena for petitioner.

Lakshman Perera with Anusha Fernando for 1st and 2nd respondents.

A. Gnanadasan Deputy Solicitor-General for 3rd and 4th respondents.

Cur. adv. vult.

September 24, 2002

WIJAYARATNE, J.

This application seeks to quash the findings and the decision made by the 3rd respondent marked A2 and the order marked G made by the 4th respondent upon the strength of the said decision. The petitioner also seeks a mandate in the nature of a writ of prohibition on the 3rd respondent from holding inquiries into the complaint respecting the paddy field, the subject matter of this application.

The basis of the present application to this court is that the 3rd respondent commenced inquiries into a complaint made against one Marthelis admittedly the tenant cultivator of the paddy field in issue. Upon death of the said Marthelis, the tenant cultivator, the petitioner was substituted in his place by an order of the 4th respondent who in terms of section 9 of the Agrarian Services Act (ASA) determined the succession of the tenant cultivator. The complaint inquired into is made in terms of section 16A of the Agrarian Services Act on the ground that Marthelis as tenant cultivator had not paid rent for two seasons of 1992 Yala and 1993 Maha. The application sought to terminate tenancy on ground of non-payment of rent.

The petitioner upon being substituted as respondent, was called upon to participate at the continued inquiry. Alleging unwarranted and adverse utterances by the 3rd respondent in the course of the inquiry, the petitioner sought that inquiry No. 16/3/24A be held by an officer other than the 3rd respondent. Such applications were made to both 4th respondent as well as to the Judical Service Commission without success. At the next date of inquiry, the petitioner having protested over the 3rd respondent continuing with the inquiry, walked away from the inquiry and did not take part therein. The petitioner concedes that the proceedings contain a statement attributed to her as consenting to the inquiry proceeding *ex parte,* though she denies having so given her consent. However, the inquiry having proceeded with *ex parte* in her absence, findings and decision marked A2 is made against her. Consequent to such decision, the 4th respondent issued the the impugned order of

vacation of the paddy field in issue and the same is presented marked G.

The petitioner seeks the several mandates of writ of certiorari and prohibition on the grounds of:

a) bias on the part of 3rd respondent as inquiry officer;
(b) illegality of the decision; and
(c) whole proceedings being *ultra vires* the powers of 3rd respondent.

The first and second respondents, the owner (minor) and the landlord respectively of the subject matter of the application refute the allegations and plead propriety and lawfulness of the proceedings and the order impugned.

The following are common grounds between the parties:

a) The application under section 16A was made against Marthelis the tenant cultivator,
b) Marthelis passed away on 28.4.1994 pending inquiry into the application,
c) The present petitioner was substituted in place of the deceased tenant cultavator,
d) The petitioner was determined as successor to tenant cultivator on 28.5.1997 in terms of section 9 of Agrarian Services Act by order of 4th respodent,
e) The application under section 16A concerned neglect and default on the part of Marthelis in cultivating the two seasons referred to above.

Relying on such commonly admitted grounds, the petitioner attributed bias to 3rd respondent based upon unwarranted and unduly made comment in the course of finding marked A2. Legality of the decision is challenged on the basis that the 3rd respondent could not have concluded that the respondent was negligent without first determining the yield in relation to the extent of land cultivated. The petitioner also challenged the *vires* of the order to evict her on alleged default and neglect of the previous tenant cultivator.

Perusal of the proceedings and findings A2 containing so much of unwarranted comments by the 3rd respondent reveals a

clear manifestation of bias on the part of the inquiry officer, though he is at pains to declare otherwise. What is apparent from such comments is that the inquiry officer has considered the general conduct and the character of the substituted respondent rather than the act in issue, namely the default or neglect on the part of the tenant cultivator in the years 1992 and 1993. Vide *Martin Singho* vs. *Kularatne*(1).

The act in issue at the inquiry into the application under section 16A is the conduct of Marthelis as tenant cultivator and not that of the substituted respondent who is the present petitioner in this application. The failure on the part of 3rd respondent to appreciate this aspect is clearly attributable to his having paid more attention to the character and conduct of the substituted respondent rather than to the matter in issue, the default and neglect on the part of Marthelis. This position is uncontroverted in the light of his own findings and comments made prior to the concluding decision.

In *Karavita* vs *Abeyratne* (2) it was held:

> "In the circumstances the allegation stands uncontroverted and whether or not the particular member of the tribunal was actually biased or not against the applicant is immaterial. Reasonable and right minded people would think that he was biased."

This rule eminently fits the facts of the present application.

Examining the legality of the decision, what this court observes is that the 3rd respondent has not made any finding or determination whether the tenant cultivator, Marthelis against whom the complaint is made, "so neglected the cultivation" as to reduce the yield but merely gone by the complaints P6, P9, P10 and P12 (referred to in A2). Section 17(5) of Agrarian Services Act clearly lays down that 'computation of yield' should be done in relation to the 'extent cultivated'. There is no finding by the 3rd respondent of the extent cultivated and the yield obtained. Nor is there a comparison of the yield with the yield of other fields in the area. This amounts to failure to comply with the requirements of the law or failure to consider material facts relating to the matter in issue by the 3rd respondent. He should have determined the average yield expected of the extent cultivated and the actual yield obtained. Failure to determine the same is a clear error in law.

Examining the *vires* of the decision A2 and the order G, this court observes the scheme of Agrarian Services Act stated in section 16 is to ensure efficient cultivation of paddy fields and to punish only the wrong doer. The alleged default and neglect is on the part of Marthelis who departed his life several years before the impugned decision was made. The present petitioner is determined to succeed to tenancy only in the year 1997 at least five years after the alleged default and neglect. There is no rational basis, justification or legal provision empowering the 3rd and 4th respondents to terminate the tenancy of a cultivator even on proved default and neglect of another tenant cultivator, whatever the relationship between them may be. There is no legal provision extending the liability to be terminated as the tenant cultivator to a succeeding tenant cultivator determined under section 9 of Agraraian Services Act. Accordingly the decision of the 3rd respondent marked A2 and the order of the 4th respondent marked G are quashed. This court also sees that interests of justice will suffer if the 3rd respondent is permitted to proceed with inquiries into the disputes between the petitioner and the 1st and 2nd respondents relating to the paddy field in suit. In the result the application for writ of prohibition is allowed.

Issue mandate in the nature of writ of certiorari quashing the decision marked A2 and the order of eviction marked G. Also issue the mandate of writ of prohibition prayed for in prayer C of the petition.

Application is allowed with costs.

TILAKAWARDENA, J. – I agree.

Application allowed.