

1961 Present : H. N. G. Fernando, J., and L. B. de Silva, J.

R. ARNOLIS SILVA, Petitioner, and D. TAMBIAH (Superintendent of Police), Respondent

S. C. 348—*Application for a Mandate in the nature of an Injunction under Section 20 of the Courts Ordinance*

Injunction—Ex parte application—Power of Supreme Court to grant it without notice to opposite party—Interference by Police with private rights of property—Town and Country Planning Ordinance, No. 13 of 1946, ss. 6 (2) (b), 46—Housing and Town Improvement Ordinance (Cap. 199), s. 12—Courts Ordinance, s. 20—Civil Procedure Code, s. 664.

Under section 20 of the Courts Ordinance the Supreme Court has power in a fit case to grant an injunction after only *ex parte* hearing and without prior notice to the opposite party.

The Superintendent of Police, Matara, and other police officers acting under his orders were preventing the petitioner from erecting on his own land temporary stalls and structures for the conduct of the fair known as the "Dondra Fair". The petitioner applied for an injunction under section 20 of the Courts Ordinance. He alleged that the interference by the Police purported to be in reliance upon Orders made under the Town and Country Planning Ordinance, No. 13 of 1946. *Prima facie* the interference complained of appeared to be of an extraordinary nature and likely to cause "irremediable mischief" if not restrained by immediate injunction.

Held, that the circumstances did not render it essential that the respondent be given an opportunity of being heard prior to the issue of an injunction.

Neither the Town and Country Planning Ordinance nor the Housing and Town Improvement Ordinance empowers a police officer to enter upon private property, or to use force, in order to prevent the erection of structures in contravention of the statutory provisions.

Semble : There is no provision of law which justifies the use of Police power to obstruct the exercise of private rights of property which do not involve the commission of crime or a likely breach of the peace.

APPPLICATION for an injunction under section 20 of the Courts Ordinance.

H. W. Jayewardene, Q.C., with G. T. Samarawickreme and S. S. Basnayake, for petitioner.

Cur. adv. vult.

July 21, 1961. H. N. G. FERNANDO, J.—

The petitioner claims to be a co-owner of the land called Palliyawatta situated at Devi Nuwara in the District of Matara, exclusive of the premises of the Sri Vishnu Devale, and further claims that the annual

fair known as the “Dondra Fair” has for centuries been held on the said land, and has for many years within living memory been conducted by himself and his predecessors in title. The Dondra Fair, it is alleged, has been ordinarily conducted during the period of the Esala Festival of the Devale, and for that purpose it has been customary for the petitioner to create temporary stalls and structures on the land which are let by him for the purpose of the conduct of the fair.

The gravamen of the petition is that the respondent, who is the Superintendent of Police, Matara, and other Police officers acting under his orders, are preventing the petitioner from completing the erection of structures which the petitioner had commenced to construct for the purposes of the conduct of the fair due to commence on 24th July, 1961. The petitioner alleges that this interference by the Police purports to be in reliance upon Orders which have been made under the Town and Country Planning Ordinance, No. 13 of 1946.

By Order made by the Minister of Local Government and Housing under section 6 (2) (b) of the Ordinance, and published in the *Government Gazette* No. 12,507 of July 6th, 1961, the area specified in the Schedule to that Order has been declared to be an Urban Development Area for the purposes of that Ordinance. According to the petitioner the land to which his petition relates is situated within the Development Area. The Minister, by another Order published in the same *Gazette*, directed an Outline Planning Scheme to be prepared for the Development Area. The immediate effect of these Orders is to bring into operation section 46 of the Ordinance, the relevant provision of which is that :—

“ no person shall erect or re-erect any structure in that area unless authorised so to do by any provision contained in the general interim development order ”

The Petitioner avers that the respondent is acting on the basis that this provision of the Ordinance prohibits the erection of the temporary structures which the petitioner had commenced to erect, and that the respondent (so the petitioner avers) is preventing the completion of the structures for that reason. The petitioner contended that such action on the part of the respondent and his subordinates is wrongful and unlawful, and he prayed for an injunction “restraining the Respondent, his agents and subordinates from—

- (a) in any way preventing or interfering with the construction and completion by the Petitioner of the temporary structures on the land called Palliyawatta described in paragraph 1 above in connection with and for the celebration of the Devi Nuwara MAHA VISHNU DEVALE Esala Festival, 1961, and
- (b) interfering with the holding and carrying on the Dondra Fair in the said premises in connection with the said Devi Nuwara Esala Festival.”

The petition was mentioned in Court on 21st July, and we agreed to consider it as a matter of great urgency, for the reason that the Esala Festival and the Dondra Fair were due to commence on 24th July. After hearing learned counsel for the petitioner, we made Order granting the injunction, and now state our reasons.

Examination of the General Interim Declaration Order (referred to in section 46 of the Ordinance) which was published in *Government Gazette* No. 9,816 of January 16th, 1948, makes it very nearly manifest that the erections commenced by the petitioner did not contravene section 46, but on the contrary, were expressly permitted by paragraph 5 (*d*) of the Schedule to the Order. But even assuming that section 46 prohibits such erections, there is nothing in the Ordinance, nor in any other law of which we are at present aware, which authorises the utilization of Police power to prevent such erections. While the purpose of section 46 is to control generally building development in a declared area, pending the preparation of a plan for its development, and not merely to require precedent approval by a local authority of proposals to erect particular buildings, the means by which the purpose is intended to be achieved does not appear to be substantially different from those envisaged in statutes like the Housing and Town Improvement Ordinance (Cap. 199). If a building is erected in contravention of that Ordinance without prior approval from the local authority, the person erecting it is liable to be convicted by a court of law; but even so, the building cannot be demolished unless the court in its discretion orders demolition. I need not refer to the decisions of this court which hold that an order for demolition will not as a matter of course follow upon a conviction for erection in breach of the Ordinance. Section 12 of Cap. 199 also empowers the Chairman of a local authority to effect demolition *after following the procedure there laid down*. But neither Ordinance empowers a Police officer to enter upon private property, or to use force, in order to prevent the erection of structures in contravention of the statutory provisions. The "proper authority" for the enforcement of such provisions is not the Police Department; and in this case the proper authority is the Planning Authority for the Area, namely the Town Council and the Government Planner. If therefore, the interference by the respondent has been (as alleged by the petitioner) in reliance upon the Town and Country Planning Ordinance, it was unlawful.

We appreciate that the petitioner may incorrectly have averred that the interference has been upon the ground just stated. The respondent may have relied on some other ground; but we are unaware of any provision of law which justifies the use of Police power to obstruct the exercise of private rights of property which do not involve the commission of crime or a likely breach of the peace. If in fact the respondent does rely on some such other ground, it will of course be open to him to move this court to vacate its Order of July 21st. But having regard to the fact that the fair was due to commence on July 24th, and to the fact that *prima facie* the interference complained of appears to be of an

extraordinary nature and likely to cause "irremediable mischief" if not restrained by immediate injunction, the circumstances did not in our view render it essential that the respondent be given an opportunity of being heard. That opportunity he will have if and when he seeks to show cause why the injunction should be discharged.

The power to issue injunction is conferred by section 20 of the Courts Ordinance in the following terms :—

"The Supreme Court, or any Judge thereof, shall be, and is hereby authorised, to grant and issue injunctions to prevent any irremediable mischief which might ensue before the party making application for such injunction could prevent the same by bringing an action in any original court".

Section 664 of the Civil Procedure Code prevents a District Court from issuing an injunction without prior notice to the opposite party, except in a case where *the object of granting the injunction would be defeated by delay*. There being no similar requirement for prior notice in section 20 of the Courts Ordinance, the Supreme Court has undoubtedly the power in a fit case to grant an injunction after only *ex parte* hearing. The exceptional circumstances referred to in section 664 of the Code clearly exist in the present case.

L. B. DE SILVA, J.—I agree.

Application allowed.

