

1937

Present : Abrahams C.J.

APPUWA v. HOMAPALA et al.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus*-ON THE
CHAIRMAN AND MEMBERS OF THE VILLAGE COMMITTEE OF
GANGAIHALA KORALE.

*Village Communities Ordinance—Permit to hold a fair—Right of grantee to ask
for renewal—Ordinance No. 9 of 1924, s. 29.*

A person to whom a Village Committee has granted a permit to establish a fair is not entitled to claim a renewal of the permit on payment of the annual fee.

THIS was an application for a writ of *mandamus* on the Chairman and Members of the Village Committee of Gangaihala korale.

H. V. Perera, K.C. (with him C. V. Ranawake), for petitioner.

N. E. Weerasooria (with him Cyril E. S. Perera), for first, fourth to ninth, and fifteenth to seventeenth respondents.

H. E. Amerasinghe, for second, third, tenth, eleventh, thirteenth, fourteenth and eighteenth respondents.

Cur, adv. vult

December 7, 1937. ABRAHAMS C.J.—

This is an application for a writ of *mandamus*. The applicant obtained a rule on the Chairman and the members of the Village Committee of Gangaihala korale in Udapalata Gampola, Central Province, to show cause why they should not permit him to continue to hold a private fair within the area of their authority. The Chairman and the majority of the members of the Village Committee appeared in order to show cause, the remainder of the members of the Committee, although represented, submitted that they did not oppose the application.

By virtue of section 29 of the Village Communities Ordinance, No. 9 of 1924, the Village Committees of the subdivisions of the Central Province made certain rules which, as required by the above-named Ordinance, received the approval of the Governor. By rule 29 of those rules, "No person shall establish private 'galas' or halting places, fairs, markets, or slaughtering places without the sanction of the Village Committee, or without payment of a fee to be fixed by the Village Committee". The applicant requested the Village Committee of Gangaihala to sanction the establishment by him of a Sunday fair. Sanction was granted, and the document granting sanction reads as follows:—

No. G.T. 308.

Gangaihala Korale Village Com.

Gampolawela, Gampola, 30th July, 1933.

Authority or permit is granted to P. Appuwa of Ampitiya in Dolobage to establish a Sunday fair at Gonnagahamulawatta at Ampitiya in Gangaihala korale of Udapalata on payment of Rupees Twelve (Rs. 12) from the 1st January, 1933, under the orders of the Village Committee subject to the under-mentioned conditions in accordance with rule No. 29 framed under section 29 of the Village Committee Ordinance, No. 9 of 1924, as published in the *Ceylon Government Gazette* No. 7,727 of 9th August, 1929.

(1) The permit shall be renewed yearly on payment of the above-mentioned fee.

(2) The said fee shall be remitted to the Kandy Kachcheri annually on or before the 1st day of January and obtain proper receipts therefor.

(3) If necessity arises at any time, to close the above fair, temporarily or permanently the Committee shall be informed in writing one month previously.

(4) Upon a special requirement the fair shall be open on any other day in the week for the benefit of the public.

(5) The fair shall be open from 6 A.M. to 6 P.M. on dates of business.

(6) Acts contrary to law such as gambling, sale of intoxicants, &c., shall not be done or allowed to be done within the premises of the fair.

(7) Any act contrary to law concerning the health of the public shall not be done or allowed to be done.

(8) Any headman or any person legally appointed by the Village Committee shall be allowed to inspect the Sunday fair at any time when it is open.

Sgd. S. M. PUNCHI BANDA,
Chairman, V. C., Gangaihala.

Sometime in December, 1936, the applicant remitted the fee for the year 1937 to the Government Agent of the Central Province, and was informed by the Government Agent that the fair was to be discontinued as from January 1, 1937, and on January 3, 1937, he received a notification from the Chairman of the Village Committee to the effect "that the Sunday fair carried on by you near Lokananda Maha Vihare should be closed as from January 1, 1937". No reason was given for this action, and the applicant complains that he has been put to a great deal of expense because in expectation of the continuance of this fair he had erected permanent structures. In the affidavit of the Chairman of the Village Committee in these proceedings it is stated that the reason for the discontinuance of this fair was that the site on which it was held was too near the preaching hall of the village temple, and that it was then resolved that another site should be selected. However, the damage to the applicant or the reason for the discontinuance of permission are purely collateral matters, the question for my decision being whether the applicant for the writ has a legal right to the establishment of the fair as a private fair, and whether the Village Committee is under a legal duty to sanction such an establishment.

The applicant puts his case in this way. Rule 29, under which private fairs can be established, intends that private fairs should be established but that obviously some conditions must be affixed to their establishment. These conditions were set out in the document granting permission to the applicant, and so long as those conditions are fulfilled, so far as they are incumbent upon the applicant, he is entitled to maintain this fair. It is not suggested that he has violated any of the conditions, and as he tendered payment of the annual fee fixed by the permit the Village Committee had no power to refuse a renewal of the permit according to the first condition in the permit which, the applicant says, is an undertaking on the part of the Village Committee to renew the permit if the annual fee is paid.

I do not agree that any person has a legal right to establish a private fair. Whether private fairs or any other of the activities mentioned in rule 29 are to be established and carried on in the area under the authority of a particular Village Committee is one for the Village Committee to decide. For the well-being of a particular area it may or it may not be desirable that a fair should be established. If it becomes desirable the Village Committee under rule 20 of the above-named rules is empowered to establish such a fair. That rule reads as follows:—

"If it is necessary the Village Committee shall establish in villages, with the sanction of the Government Agent, (a) 'galas' or halting places for carts or cattle, (b) fairs or markets, and (c) slaughtering places"

If the inhabitants of a village desire the establishment of a fair, they are, of course, in a position to make representations to the Village Committee, whom, presumably they can control to a certain extent by their electoral powers, and the Village Committee, if it does its duty properly, would then consider whether it should itself establish a fair or invite private venturers to do so. It seems to me that any other state of affairs

in the village area would produce a thoroughly undesirable result. There might be very easily several private fairs running not only in competition with each other but with a public fair as well, since if private persons have a right to establish a fair, I do not see how any limit could be put upon the number of fairs in any particular village area. For that reason I am of opinion that the applicant has not shown the infringement of any right to which he is entitled.

The applicant would fail too in this particular case on his own submissions even if he has a right to establish a fair, for I do not think that the permit gives him a right, expressly or impliedly, to a renewal as a matter of course if he pays the specified fee. The wording of condition (1) is not very exact, but I think it means that the permit lasts for one year only and may be renewed from year to year without imposing any obligation on the Village Committee to renew it.

The rule will be discharged with costs.

Rule discharged.
