IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

DDM Vitharana
2nd Respondent-Appellant

Vs

CA (PHC) 20/2001
HC Matara Writ 66/99

Vidanagamage Fransis

Petitioner-Respondent

Assistant Commissioner Agrarian Services
Matara

1st Respondent-Respondent

Before : Sisira de Abrew J &
KT Chitrasiri J

Counsel : Sarath Abeysinghe for the 2nd respondent-appellant
No appearance for the petitioner-respondent
Nuwan Peiris SC for the 1st respondent petitioner

Argued on : 12.5.2011
Decided on : 28.6.2011

Sisira de Abrew J.

The Assistant Commissioner of Agrarian Services (hereinafter referred to as the Commissioner), on a complaint sent by the appellant,

acting under Section 18 of the Agrarian Services Act No. 58 of 1979 (the Act), by letter dated 15.7.1981, directed Vidanagamage Fransis (the respondent) to pay due share of the paddy field to the appellant who is the owner of the paddy field. Since the respondent did not comply with the said direction, the Commissioner, acting under Section 18(2) of the Act issued an eviction order dated 20.10.1981 on the respondent. The court of Appeal, by judgment dated 29.4.1987, quashed the said eviction order. Leave to appeal application filed by the appellant against the said order was refused by the Supreme Court. Thereafter the Commissioner, acting in terms of the judgment of the court of Appeal, by letter dated 25.10.95, directed the appellant to hand over the possession of the paddy field to the respondent. The commissioner again issued a letter dated 16.1.96 directing the appellant to hand over the possession of the paddy field to the respondent. The appellant did not comply with the said direction. Since the Commissioner failed to place the respondent in possession of the paddy field, the respondent filed a petition in the High Court praying for a writ of Mandamus directing the Commissioner to establish his ande rights. The Learned High Court Judge (HCJ), by his order dated 12.9.2000, issued a writ of Mandamus directing the Commissioner to implement the judgment of the Court of Appeal.

It has to be noted here that the Court of Appeal by its judgment dated 29.4 1987 quashed the decision of the Commissioner evicting the respondent. If the decision of the Commissioner evicting the respondent was quashed, he must be placed in possession of the paddy field. When the court of Appeal made an order on a public officer it becomes the public duty of the said officer to implement it. The public officer cannot interpret the order of the Court to give an absurd meaning. The contention of learned counsel

for the appellant that the Commissioner has no public duty to place the respondent in possession of the paddy field cannot be accepted. Learned counsel for the appellant cited a case reported in 73 NLR 261 (The Eksath Engineru Saha Samanya Kamkaru Samithiya Vs S.C.S De Silva). In that case Supreme Court held: "Where an order of an inferior tribunal is quashed by the Supreme Court in Certiorari proceedings on a ground which does not deal with the merits of the case, the inferior tribunal has jurisdiction to rehear the case. But if the order was made by an Industrial Court, the proviso to section 22(2) of the Industrial Disputes Act does not enable to such re-hearing if the members of the panel from which the Industrial Court was constituted ceased to be members of the panel either during the pendency of the certiorari proceedings or thereafter." In my view it has no application to the facts of this case.

For the above reasons, I hold that there is no reason for this Court to interfere with the judgment of the learned HCJ dated 12.9.2000. I therefore dismiss the appeal with costs fixed at Rs.50,000/-.

Appeal dismissed.

Judge of the Court of Appeal.

C.A.(PHC)20/2001 **28. 06. 2011**
H.C. MATARA WRIT 66/99

K.T. CHITRASIRI, J.

Having perused the judgment of His Lordship Justice Sisira de Abrew, it is my desire to express my views on the issue whilst agreeing with His Lordship's conclusion.

Impugned order of the learned High Court Judge of Matara was made pursuant to an application made by the petitioner-respondent namely Vidanagamage Francis (hereinafter referred to as the respondent) for a Writ of Mandamus in order to compel the 1st respondent-respondent namely the Assistant Commissioner of Agrarian Services (hereinafter referred to as the Commissioner) in order to obtain possession of the paddy field called Dolamawatha alias Mahakumbura, ensuring his *ande govi* rights over that property.

Since there were several applications in this connection by the parties, to court as well as to the Commissioner, it is necessary to refer to the events that had taken place in a chronological manner.

- Admittedly, the respondent had been the *ande cultivator* of the land in question for many years whilst the 2nd respondent-appellant namely D.D.M.Vitharana (hereinafter referred to as the appellant) had been the owner of the land.
- By letter dated 15.07.1981, the appellant made a complaint to the Commissioner alleging that the respondent did not give the owners share of the harvest to him.
- The Commissioner without affording an opportunity to the respondent to present his case, made order directing the respondent to leave the land in dispute by his letter dated 20th October 1981. Interestingly, nothing is mentioned in the said

letter as to whom the possession of the land was to be handed over. Purportedly, this direction was made in terms of Section 18(2) of the Agrarian Services Act No.58 of 1979.

- However, the Circumstances reveal that the appellant had taken over the possession of the paddy field. The said possession of the land is still in the hands of the appellant and it is now nearing 30 years.
- Pursuant to the aforesaid dispossession, the respondent made an application to the Court of Appeal by filing the case bearing No.CA 1276/82 and sought relief by way of a writ.
- In that application, the Court of Appeal issued a Writ of Certiorari quashing the decision of the Commissioner referred to in the aforesaid letter dated 20.10.1981. However, no specific order was made in the Judgment by the Court of Appeal as to who is entitled to the possession of the land though the possession had already been taken over by the appellant on the strength of the said decision that had been nullified.
- A Leave to Appeal Application also had been filed against the aforesaid decision of the Court of Appeal and the Supreme Court refused the said application for leave affirming the decision of the Court of Appeal dated 29.4.1987.
- However, the possession of the land remained with the appellant though the decision to hand over the possession of the land had been quashed. Even the Commissioner did nothing until he sent two letters dated 25.10.95 and 16.01.96 after a long delay of more than 7 years directing the appellant to hand over possession to the respondent.
- The appellant did not adhere even to the said belated directives of the commissioner and continued to be in possession of the land in dispute.

- Obviously, the respondent had no option than to file another application for a writ of mandamus to compel the Commissioner to hand over possession of the land to the respondent in the Provincial High Court where such jurisdiction had been conferred on that court by then.
- High Court upon consideration of the merits, issued a Writ of Mandamus compelling the Commissioner to hand over the possession of the disputed land to the respondent. It is the decision that is being canvassed in this Court now.

Learned Counsel for the appellant argued that the learned High Court Judge should not have relied and acted upon the earlier order made on 29.4.1987 by the Court of Appeal when issuing the writ of mandamus on the Commissioner to hand over possession of the land to the respondent. In support of this contention he has referred to the case of **The Eksath Engineru Saha Samanya Kamkaru Samithya v. S.C.S.de. Silva, 73 NLR at 260.** *Ratio decendai* in that case is that where an order of an inferior tribunal is quashed by the Supreme Court in *Certiorari* proceedings on a ground which does not deal with the merits of the case, the inferior tribunal has jurisdiction to re-hear the case".

Therefore the contention of the learned Counsel is that the parties in this instance should have taken steps to have a re-hearing of the matter rather than resorting to file another action. He also argued that the earlier order of the Court of Appeal was only to quash the decision of the Commissioner on the basis that it was made without affording an opportunity to the respondent to present his case, violating the principles of natural justice. He further said that there was no directive made by the Court of Appeal to hand over the possession of the land but it was merely to quash an executive decision. His

position therefore is that the learned High Court Judge was wrong when he issued the writ of mandamus relying upon the earlier decision of the Court of Appeal.

Then the question arises whether the Commissioner could have directed the appellant to hand over possession to the respondent in the absence of a specific order to do so merely on the strength of the writ of certiorari that was issued by the Court of Appeal. The order of the Court of Appeal was made on the basis that there had been no proper inquiry held by the Assistant Commissioner to arrive at his decision referred to in the letter dated 20.10.1981. In such a situation, the parties concerned should have taken proper steps, particularly the Commissioner, to have a proper inquiry giving both parties an opportunity to present their respective cases.

Without resorting to such a process, the Commissioner has kept a blind eye on the issue for many years. More importantly, even the respondent without making a request to the authorities to hold an inquiry into the complaint of the appellant namely not giving the proper harvest share to the owner, sought the assistance of the Commissioner and the Court, to obtain possession of the land through them. The Commissioner too may have not pursued the requests of the respondent to hand over possession since there was no order compelling him to hand over the possession of the land. Therefore, it is not incorrect to argue that the Commissioner cannot be compelled by way of a writ of mandamus to hand over possession of the land on the strength of the writ of certiorari issued by the Court of Appeal.

However, it is important to note that the order of the Court of Appeal dated 29.4.1987, quashing the decision contained in the letter of the Commissioner dated 20.10.1981, makes all the subsequent acts done on the basis of that letter, invalid.

Accordingly, even the taking over of the possession of the land by the appellant, it being one such act should necessarily has no force or effect in the eyes of the law. In other words dispossession of the respondent pursuant to the letter dated 20.10.1981 from the land in question becomes unlawful and untenable.

Against such a background, it is clear that a public duty is cast upon the Commissioner to restore the status of the land in question to the position that prevailed at the time he issued the directive to hand over the possession to the appellant by his letter dated 20.10.81. In fact, the Commissioner should have issued a directive to hand over the possession of the land, back to the respondent immediately after the issuance of the order quashing his decision by the Court of Appeal on 29.04.1987. In this instance, he has failed to do so until he wrote the letter dated 25.10.1995.

Accordingly, it is my considered view that a writ of mandamus would lie to make a direction on the officer namely the Commissioner to perform the said public duty restoring the position that was in existence before the taking over of the possession of the land by the appellant. Certainly, the learned High Court Judge when he issued the writ of mandamus compelling the Commissioner to hand over possession of the paddy field to the respondent must have had addressed his mind to these matters. Therefore, I am not inclined to interfere with his decision and hold that the issuance of the writ of mandamus by the learned High Court Judge is correct.

At this stage, it is noteworthy to mention that had the lawyers for the respondent moved for a writ of certiorari and for a writ of mandamus simultaneously in the first application that was made in the year 1982 against the decision of the Commissioner,

this protracted litigation would have been avoided and obtained the relief pending a proper inquiry by the Commissioner. Also, it is to be noted that due to the wrongful dispossession of the respondent from the paddy field, he had lost his income that he could have received by cultivating this land for nearly 30 odd years or at least from the date of the decision of the Court of Appeal, namely 29.04.1987.

I also must mention that though the possession of the land is to be handed over to the respondent on the basis that I have mentioned hereinbefore, the appellant's right to pursue his complaint made to the Commissioner dated 15.07.1981 still persists and it has not come to an end. Therefore, he has every right to take necessary steps to act accordingly.

With those comments, I also conclude that this appeal should stand dismissed with costs as my brother judge, Justice Sisira De Abrew has decided.

Appeal dismissed with costs fixed at Rupees Fifty Thousand (Rs 50,000/-).

JUDGE OF THE COURT OF APPEAL