

It is, therefore, clear that the first to fifth defendants are possessing the land under the *ius retentionis*. Their possession cannot be considered to be adverse, so as to afford them a foundation for a title by prescription.

I cannot understand the contention that there had been a surrender of the land to the first defendant and to Dingiriappu. Podimenika has denied this on oath. No evidence has been led for the defence, and there is no notarial deed produced to prove the surrender. The evidence makes it clear that as the owners were unable to raise the amount of compensation, they told the first defendant and Dingiriappu to possess the land till the money was found.

The claim that the right of the plaintiffs to tender compensation is barred by limitation is based on no known principle of law. Counsel for the respondents was unable to refer us to any section of the Prescription Ordinance on which such a contention could be based.

I set aside the decree appealed from, and enter judgment for the plaintiffs in regard to an undivided half of the land as prayed for, with damages at Rs. 50 up to date, and continuing damages of Rs. 25 *per annum* thereafter until possession is restored to the plaintiffs. The first to fifth defendants will be entitled to withdraw the sum of Rs. 156.25 deposited in Court. The first to fifth defendants will pay to the plaintiffs the costs both here and below.

NAGALINGAM J.—I agree.

Appeal allowed.

1949

Present : Nagalingam J.

ABEYAGUNASEKERE, Petitioner, and LOCAL GOVERNMENT SERVICE COMMISSION *et. al.*, Respondents

S. C. 403—IN THE MATTER OF AN APPLICATION FOR A MANDATE IN THE NATURE OF A WRIT OF CERTIORARI, AND IN THE MATTER OF AN APPLICATION UNDER SECTION 42 OF THE COURTS ORDINANCE

Writ of Certiorari—Local Government Service Commission—Dismissal of officer—Inquiry—Administrative or judicial act—Excess of jurisdiction.

A writ of *certiorari* will not lie to set right a wrong decision of a tribunal provided it is not one without or in excess of jurisdiction.

Obiter: The determination of the employment of an officer by the Local Government Service Commission is a quasi-judicial and not a purely ministerial act.

Suriyawansa v. The Local Government Service Commission (1947) 48 N. L. R. 433 dissented from.

APPPLICATION for a writ of *certiorari*.

E. B. Wikramanayake, K.C., with *H. Wanigatunga*, for the petitioner.

N. K. Choksy, K.C., with *H. W. Jayewardene*, for 1st respondent.

Cur. v. vult.

May 9, 1949. NAGALINGAM J.—

A writ of *certiorari* is applied for with a view to have an order made by the Local Government Service Commission removing the petitioner from the Local Government Service brought up and quashed.

At the dates material to this application the petitioner was Ward Sanitary Inspector in the service of the Local Government Service Commission and employed by the Municipal Council of Kandy. On certain representations made to the Council alleging that the petitioner was guilty of having accepted illegal gratification from members of the public in the ward supervised by him the Council by a resolution reported to the Commission two charges against the petitioner and later the Finance Committee of the Council reported two other charges direct to the Commission. On receipt of the first report the Commission framed charges as provided by the Rules framed in that behalf and caused those charges to be served on the petitioner, and on receiving the petitioner's reply thereto, fixed the matter for inquiry; pending inquiry charges on the second report were also framed and served on the petitioner and those charges too were fixed for inquiry for the same date. Petitioner was represented by Counsel and the witnesses who were called in support of the charges framed against the petitioner were examined in his presence and cross-examined by Counsel on his behalf. The Commission after deliberation held three of the charges were unproved but found the petitioner guilty on the fourth charge and decided that he should be removed from its service.

The petitioner questions the validity of the proceedings had against him and the order made by the Commission. At the argument Mr. Choksy for the respondent took a preliminary objection that the application does not lie as the act complained of was purely a ministerial one as distinct from a judicial act, and relied upon the view expressed by my brother Canekeratne J. in *Suriyawansa v. Local Government Service Commission*¹ that "the termination of the services of an employee by the Local Government Service Commission was more in the nature of an executive or administrative character than judicial".

As at present advised, I am not prepared to assent to the view that a determination of the employment of an officer by the Local Government Service Commission is purely ministerial and does not partake of the character of at least a quasi-judicial act. The Local Government Service Commission is a statutory body which has cast upon it certain duties and obligations in regard to the officers it employs by rules and regulations framed in that behalf. In *King v. Woodhouse*² Vaughan Williams L.J. details a number of cases where what may very well be regarded as acts ministerial acts have formed the subject of writs of *certiorari*; for instance, he refers to a case where an order of Quarter Sessions allowing or disallowing items in the Treasurer's Account was held to be one falling within the ambit of a writ of *certiorari*.

The test, however, seems to be that, where a statutory body is called upon to exercise its functions according to principles laid down in the Statute, if it does not act in consonance with those provisions, any

¹ (1947) 48 N. L. R. 433.

² (1906) 2 K. B. D. 501.

order made by it may be liable to be questioned on *Certiorari*, as for instance, where the Commission, without framing charges, without affording an opportunity to the employee to exculpate himself and without holding an inquiry, purports to dismiss him, I do not think it can be gainsaid that such an order would, as being one made without jurisdiction, be liable to be quashed in *certiorari*; but where it has performed its duties in accordance with the statutory provision, the soundness of the conclusions reached or the decision arrived at cannot form the subject of review by means of a writ of *certiorari*.

It is, however, unnecessary for me to pursue the question further as I am satisfied that in this case the Commission has acted in accordance with the powers and duties vested and imposed on it and Mr. Wickremenayake has not been able to show the contrary; so that, even assuming the act of the Commission to be a judicial act, that act is not liable to be questioned on *certiorari*, for it is well established that the writ cannot be availed of to set right even a wrong decision provided it is not one without or in excess of jurisdiction. See *King v. Woodhouse (supra)* and *de Soysa v. Dyson*¹.

In this view of the matter the application fails and is refused with costs.

Application refused.

1949

Present: Windham J. and Gratiaen J.

WILLIAM PERERA *et al.*, Appellants, and INSPECTOR OF POLICE, MAHARAGAMA, Respondent

S. C. 375-376—M. C. Colombo South, 20,548

Criminal Procedure Code—Magistrate assuming jurisdiction as District Judge—Replaced by another Magistrate after commencement of proceedings—Successor continues proceedings without independent decision to act under Section 152 (3)—Conviction not vitiated—Sections 152 (3) and 292—Courts Ordinance, Section 88.

Magistrate G, without proceeding to hear any evidence, recorded: "I peruse the B reports and as facts are simple I assume jurisdiction as Additional District Judge". The accused were thereupon charged and the hearing of the case was adjourned. By the time of the adjourned hearing Magistrate G had been transferred, and Magistrate W, his successor, who was also an Additional District Judge, proceeded to record the evidence and eventually to convict the accused.

Held, (i) that there was a proper assumption of jurisdiction by Magistrate G under section 152 (3) of the Criminal Procedure Code;

(ii) that, by virtue of section 88 of the Courts Ordinance, the proceedings before the successor Magistrate W were not vitiated by the fact that he himself did not record his independent decision that he was electing to try the case summarily in accordance with section 152 (3) of the Criminal Procedure Code.

¹ (1945) 46 N. L. R. 351.