

**GNANATILLEKE v. ATTORNEY-GENERAL &
ANOTHER
SIRIMANE v. ATTORNEY-GENERAL & ANOTHER**

SUPREME COURT
SAMARAKOON, C.J., ISMAIL, J. AND SHARVANANDA, J.
S.C. APPLICATION NOS. 47 AND 48 OF 1979.
OCTOBER 12, 1979.

Constitution of Sri Lanka, 1978, Article 12(1)-Right to equality before the law-When infringed by administrative action-Wrong decision bona fide made does not violate Article 12(1).

The petitioners made applications to the Government Agent for the allotment of State land being distributed under a scheme of distribution designed to ensure that the most deserving persons are granted land. Petitioners' applications were rejected on the allegations made that they possessed land. The petitioners made applications to the Supreme Court for relief under Article 126(2) of the Constitution. In their affidavits, the petitioners denied that they own, possess or occupy any land and it was argued on their behalf that the allegations that they possessed land being untrue, they had been deprived of equal treatment with the others.

It was common ground that owing to the insufficiency of the land available for distribution, out of the large number of applicants, some who were qualified, did not receive any land. The petitioners did not question the *bona fides* of the Government Agent.

Held :

What the petitioners complain of is a wrong determination of facts, namely that they owned land when they in fact did not own, possess or occupy land. As a result they were placed in the wrong category. A wrong decision *bona fide* made on a question of fact cannot constitute a breach of the fundamental right of equality in the eye of the law, (*Wijesinghe v. Attorney-General et al.*, followed).

Case referred to :

(1) *Wijesinghe v. Attorney-General & Others, (1978-79) 1 Sri L.R. 65.*

APPLICATION under Article 126(2) of the Constitution.

E.D. Wickremanayake, for the petitioners.
S. Ratnapala, State Counsel, for the Attorney-General.

Cur. adv. vult.

October 17, 1979.
SAMARAKOON, C.J.

The petitions in these two cases deal with the same subject matter. Each of the petitioners is a citizen of Sri Lanka by descent, and each has been resident in the District of Nuwara Eliya from birth.

Each of them alleges that he is not married and does not own or possess or occupy any land whatsoever. These applications arise as a result of a failure to obtain allotments of land from the Government. On or about the 15th of February, 1978, the 2nd respondent who was the Government Agent of Nuwara Eliya at the time published a notice calling for applications to hold a Land Kachcheri for the purpose of allotting $\frac{3}{4}$ th acre blocks of land in the Meepilimana Co-operative Farm. Each of the petitioners in these two cases applied. The petitioner in application No. 47 was not one of those selected, but the petitioner in application No. 48 was one of the selectees. There seems to have been some objection lodged to the selections made and the 2nd respondent by notice dated 27th October, 1978, cancelled the said Land Kachcheri. He then published another notice on 20th February, 1979, calling for application for selection at a Land Kachcheri to be held on 4th, 5th and 6th April, 1979, for allocation of half acre lots in the same Co-operative Farm. Some of the qualifications set out were as follows:-

"(a) Permanent uninterrupted residence since 1.1.73 by citizens of Sri Lanka in the villages of Meepilimana and Elk Plains;

(b) Applicants had to be persons not employed by the State nor engaged in business;

(c) Applicants had to be between the ages of 18 to 50 years;

(d) Applicants had to be persons not in receipt of an income of over Rs. 400 per month;

(e) Special consideration was to be shown to applicants who, and whose wives, did not own land and who were in receipt of a low income."

The notice also stated that should any application on the face of it show that applicant was a person not qualified for allotment, his application would be rejected. After inquiry the 2nd respondent published the notice dated 18th July, 1979, showing the final list of allottees. The two petitioners had failed to obtain any allotment. Hence these applications. Each of them alleges in his petition —

(a) that the allottees are either members or supporters of the United National Party which won the General Elections in 1977, and therefore formed the Government. The petitioners allege that they were supporters of the Sri Lanka Freedom

Party, and therefore in the matter of the allotment each has been discriminated against for political reasons, and

(b) that each has been treated unequally which is an infringement of the "fundamental right to be treated equally".

The 2nd respondent in his affidavit stated that the inquiry into these applications and objections was held by two of his subordinate officers and that after perusing the inquiry notes of those officers he found that the petitioner in application No. 48 had been named to succeed to a plot of State land $\frac{3}{4}$ acre in extent given on permit to his father and also that this petitioner had encroached up to $\frac{1}{2}$ acre of State land. At the hearing of this application State Counsel stated that the former allegation was mistakenly made. The second respondent also stated that the inquiry notes disclosed that the petitioner in application No. 47 of 1979 was in possession of $\frac{1}{4}$ th acre of land. Both petitioners have filed affidavits denying that they own or possess or occupy any land. They state that their application had been wrongly rejected, and that they have been subjected to unfair treatment. It was admitted in the course of the argument by Counsel for both petitioners that there was a large number of applicants in this Land Kachcheri and that a number of them, who were qualified, had not received any allotment. Apparently the extent of land available for distribution was insufficient to meet the demand of all qualified applicants.

The allegation that the petitioners had been discriminated against on the ground of political opinion was withdrawn at the argument. Counsel for the petitioners restricted his application to his allegation that the petitioners have been treated unequally. He relied on Article 12(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka which reads as follows:-

"12 (1) All persons are equal before the law and are entitled to equal protection of the law."

He argued that the petitioners' applications had been wrongly rejected on the allegation that each of them possessed land, and that being untrue they had been deprived of equal treatment with the others. In other words the 2nd respondent had by administrative action infringed their fundamental right of equality before the law.

The 2nd respondent in his affidavit states that he has been delegated the authority to issue permits under section 2(4) of the Crown Lands Ordinance (Chapter 454) for the occupation of State

land. In regard to the matter of division of this Meepilimana Co-operative Farm in extent 82 Acres and 3 Roods, the 2nd respondent states as follows in paragraph 7 of his affidavit dated 20th September, 1979:-

"Although I was aware that I did not have to observe any prescribed procedure in issuing these permits I decided to adopt what is popularly known as the "Land Kachcheri" method in order to ensure that the most deserving persons are granted the permits. Accordingly after obtaining the sanction of the Land Commissioner I published the notice dated 15th February, 1978, a copy of which has been annexed to the Petitioner's affidavit marked 'A'."

What he has set out to do was to ensure that the most deserving persons were granted the permits and that was solely his decision. For the purpose of doing this he had two categories. One category was those who satisfied the conditions laid down in the Notice dated 20th February, 1979, and the other category was those who did not satisfy these conditions. In paragraph 10 of the affidavit, the 2nd respondent states that on the second occasion he made modifications to the 1st Notice "to ensure a fairer and more equitable distribution and to enable a larger number of persons to benefit from this distribution." Ultimately a list of 120 persons was compiled for the purpose of issuing permits. As stated earlier a number of qualified persons were not in the list because there was an insufficiency of land for allotment to meet the requirements of all persons qualified. It is significant that all of them did not complain. What the petitioners complain of is of a wrong determination of facts, namely, that they owned land when they in fact did not own, possess or occupy land. As a result they were placed in the wrong category. This is not a decision of law but a decision on disputed facts. The *bona fides* of the 2nd respondent in making the finding of fact is not in question. In the circumstances though the petitioners may have a grievance, I fail to see how a wrong decision *bona fide* made on a question of fact could constitute a breach of the fundamental right of equality in the eye of the law. It is not even a breach of law and I cannot see how this Court can on application made under Article 126 of the Constitution give these petitioners protection against wrong decisions on facts due to an error of judgment. *Wijesinghe v. The Attorney-General et al.* (1). I would therefore, dismiss each of the applications, but make no order as to costs.

ISMAIL, J. — I agree.

SHARVANANDA, J. — I agree.

Applications refused.