MADDUMA BANDA

V

ASSISTANT COMMISSIONER OF AGRARIAN SERVICES AND ANOTHER

SUPREME COURT
S.N. SILVA, C.J.
BANDARANAYAKE, J., AND
YAPA, J.
S.C. APPEAL NO. 111/97
CA NO. 61/94 (H.C.) AND 74/94 (H.C.) 4 OF 1991.
H.C. NO. 28/92
16TH JULY, 30TH SEPTEMBER AND 30TH OCTOBER, 2002
AND 11TH APRIL, 2003

Writ of certiorari – Jurisdiction of the High Court of a Province to issue writ against an order under section 18 of the Agrarian Services Act – Constitution, Article 154P(4) – Ambiguous statute – Interpretation according to purpose of enactment and to advance the remedy.

The appellant, a tenant cultivator sought a writ of *certiorari* from the High Court of the Province to quash an order made by the Assistant Commissioner of Agrarian Services (1st respondent) under section 18 of the Agrarian Services Act as amended by Act, No. 4 of 1991.

Under Article 154P(4) of the Constitution, the High Court has jurisdiction to issue a writ against any person exercising any power under a law or statute in respect of any matter set out in the Provincial Council List. "Agriculture and Agrarian Services" are found in section 9 of the list with an inclusive definition of "Agriculture". The impugned order related to the failure of the appellant to pay rent due to the landlord of the paddy land.

However, in view of certain limitations provided by section 3 of the Provincial Councils (Special Provisions) Act, No. 19 of 1990 regarding appeals under the Agrarian Services Act, and certain dicta contained in the determination of the Supreme Court on the constitutionality of the Bill for the amending Act, No. 4 of 1991 the High Court opined that the impugned order was not a matter set out in the Provincial Council List and refused the writ.

Held :

1. The word "agrarian" in section 9 of the Provincial Council List relates to landed property and such property could no doubt attract paddy lands and tenant cultivators of such land and hence the impugned order would be covered by the said section 9 in the Provincial Council List.

2. In case of ambiguity, the enactment should be interpreted so as to give effect to its purpose. The purpose of the 13th Amendment is to give a right to an aggrieved party to have recourse to the Provincial High Court instead of having to seek relief from the Court of Appeal in Colombo. As such the High Court is deemed to have jurisdiction to grant writ sought under Article 154P(4).

Per Bandaranayake, J.

"It would not be correct to say (as stated in the S.C. determination on the Bill for amendment No 4 of 1991) that the matters that were dealt with in the Bill are all matters of National Policy that falls within list II"

Cases referred to :

1. *In re An Act to amend the Agrarian Services Act, No. 58 of 1979.* HANSARD 19.02.1991 Column 1184.
2. *Fothergill* v *Monarch Airlines Ltd* (1981) AC 251 at 272
3. *AG of New Zealand* v Oritz (1982) Q B 349 at 361

APPEAL from the judgment of the Court of Appeal.

Dr. Jayampathi Wickramaratne, P.C. with *Pubudini Wickramaratne* for appellant

Nizam Kariappar with *M.C.M. Nawaz, A.W. Ramzoon, Keerthi Weerasekera* and *M.I.M. Iynullah* for 2nd respondent.

Cur.adv.vult

July 17, 2003

BANDARANAYAKE, J.

The appellant had come before the Court of Appeal challenging the order of the High Court of the Central Province dated 29.06.1994. The Court of Appeal, by its order dated 10.06.1997,

while dismissing the appeal before that Court, granted leave to appeal to the Supreme Court under Rule 4(12) of the Court of Appeal Appellate Procedure Rules of 1990, on the following questions:

1. Is an order made under section 18 of the Agrarian Services Act, No. 58 of 1979, a matter set out in the Provincial Council List in the 9th schedule to the Constituion?
2. Did the learned High Court Judge err in holding that he had no jurisdiction to hear and determine the appellant's application for a *writ of certiorari* to quash an order made under section 18 of the Agrarian Services Act, No. 58 of 1979?

The facts in this case, *albeit* brief, are as follows :

The appellant was a tenant cultivator and the 1st respondent made order against him under section 18 of the Agrarian Services Act, No.58 of 1979. In order to quash the said order, the appellant invoked the writ jurisdiction of the High Court of the Central Province in terms of Article 154(P) (4) of the Constitution. The respondents took up a preliminary objection at the High Court that the matter in question, did not fall under Article 154 P, as the writ jurisdiction of the High Court of the Provinces is restricted to matters set out in the Provincial Council List. The learned Judge of the High Court, by his order dated 29.06.1994, upheld the preliminary objections and dismissed the application, stating *inter alia* that the High Court of the Provinces has no jurisdiction to issue a *writ of certiorari* quashing the decision of the 1st respondent as the question in issue does not come within the subject area specified under the Provincial Council List in terms of the 9th Schedule of the 13th Amendment to the Constitution.

Learned counsel for the 2nd respondent took up the position that the purported order challenged by the appellant is made by the 1st respondent, in terms of sections 18 and 26 of the Agrarian Services Act. The 1st respondent, according to learned counsel, excercises his powers in terms of the Agrarian Services Act, to give effect to the common law principle that the contractual relationship between the landlord and the tenant cultivator will be terminated if the latter refuses to pay the rentals to the former. Learned counsel for the 2nd respondent contended that section 18 of the Agrarian

Services Act is merely for the purpose of conferring the jurisdiction to the Agrarian Service Commission to terminate the tenancy right of the tenant cultivator when he fails or refuses to pay the rental and therefore the subject matter does not come within clause 9 of the Provincial Council List.

Learned President's Counsel for the appellant argued that the subject matter based on the Agrarian Services Act, falls within the parameters of the Provincial Council List and therefore the 1st respondent's decision is amenable to the writ jurisdiction exercised in terms of Article 154P (4) b of the Constitution.

The 13th Amendment to the Constitution, which came into effect in November 1987, was chiefly introduced for the purpose of devolving power from the Central Government to the Provincial Councils. In addition to the legislative and executive power that was devolved to the Provincial centers, High Courts of the Provinces were established and empowered to exercise the original criminal jurisdiction, appellate and revisionary jurisdiction in respect of any convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the province and such other jurisdiction and powers as Parliament may by law provide. Furthermore, in terms of Article 154(P) (4), High Courts of the Provinces shall have the jurisdiction to issue according to law orders in the nature of *habeas corpus*, in respect of persons illegally detained within the province; and orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto. The jurisdiction of the High Court of the Provinces, to issue such orders however is restricted as the Article specifies that this power could be used only against any person exercising within the Province any power under any law or any statute, made by the Provincial Council established for that Province in respect of any matter set out in the Provincial Council List. It is therefore abundantly clear that for the High Court to issue a writ quashing the order made by the 1st respondent, it is necessary that the subject matter should belong to one of the subjects listed out in the Provincial Council List.

The subject matter concerned as pointed out earlier, is related to Agriculture and Agrarian Services. The subject heading of "Agriculture and Agrarian Services" is listed under the Provincial

Council List (item No.9) as well as in the Concurrent List (item No.8).

The subjects that come within the Provincial Council List, under the heading "Agriculture and Agrarian Services", refer to the following:

9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, state land and plantation agriculture)

The Concurrent List on the other hand refers to the following subject matters :

8.1 Establishment and promotion of agro-linked industries, the establishment and maintenance of farms and supervision of private nurseries;

8.2 Soil conservation;

8.3 Plant pests.

The Agrarian Services Act, No. 58 of 1979 was enacted to provide security of tenure to tenant cultivators of paddy lands; to specify the rent payable by tenant cultivators to landlords; to provide for maximum productivity of paddy and other agricultural lands through the proper use and management of agricultural crops and livestock; to provide for the establishment of Agrarian Services Committees; to provide for the determination of tenurial and other disputes relating to agricultural land by the Commissioner of Agrarian Services; to confer and impose certain powers and duties on the Commissioner; to provide for the appointment of cultivation officers; to provide for the repeal of the Agricultural Productivity Law, No. 2 of 1972, and the Agricultural Lands Law, No. 42 of 1973; and to provide for matters connected therewith or incidental thereto.

This enabled the Commissioner of Agrarian Services to inquire and consider various disputes arising out of the duties and liabilities of the cultivatiors and paddy land owners within the jurisdiction.

The learned High Court Judge took the view that a High Court established by Article 154P of the Constitution for a Province could exercise appellate and revisionary jurisdiction only in respect of orders made under sections 5 and 9 of the Agrarian Services Act, No. 58 of 1979. This was based on section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, which reads as follows:

> "A High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province."

Admittedly section 3 of the aforementioned Act refers only to sections 5 and 9 of the Agrarian Services Act. However, Article 154P(4) provides that the High Court shall have jurisdiction to issue orders in the nature of writs **against any person** exercising within the Province any power under any law in respect of any matter set out in the Provincial Councils List.

The Provincial Council List as pointed out earlier refers to the word Agriculture. The Agrarian Services Act defines the word Agriculture in the following manner :

"Agriculture includes -

(i) the growing of rice, field crops, spices and condiments, industrial crops, vegetables, fruits, flowers, pasture and fodder;

(ii) dairy farming, livestock rearing and breeding;

(iii) plant and fruit nurseries;

The Agrarian Services Act mainly deals with paddy lands, tenant cultivators who grow rice and the landlords of the paddy fields.

The learned Judge of the High Court in deciding that the matters relating to Agriculture and Agrarian Services do not come under the Provincial Council List, based it on the determination of the Supreme Court in *In re An Act to amend the Agrarian Services Act, No. 58 of 1979.*[1] Learned President's Counsel for the appel-

lant, however submitted that the view taken by the learned Judge of the High Court is incorrect, as the Supreme Court, in Party V of its determination under the title "inconsistency with Article 154G" referred to the various items in the Provincial, Reserved and the Concurrent List and that the Court did not hold that "Agriculture and Agrarian Services" do not come under the Provincial Council List. In determining the consistency or the inconsistency of the provisions of the Bill in question, and especially referring to the submissions on whether the land rights or land tenure is a provincial subject, the Supreme Court stated that,

> ".....However, without the benefit of a full [argument] it is not desirable that we should decide the question now. It is sufficient for present purposes that the matters dealt with in the Bill are all matters of national policy in regard to the rights and liabilities of owners and tenant-cultivators, and thus fall within List II."

Learned President's Counsel for the appellant contended that the determination of the Supreme Court was to the effect that the provisions of the Amending Bill laid down National Policy. His position is that under item 1 of the Reserved List, National Policy on all subjects and functions is a matter for Parliament, where it would be permissible for Parliament to lay down National Policy even with regard to a matter listed in the Provincial Council List. By this, learned President's Counsel claimed, that the subject matter is not shifted to the Reserved List. In his words what it means is that the matter continues to be in the Provincial Council List, but all Provinces are required to conform to the National Policy laid down by the Parliament.

An illustration is given in order to clarify this position further. Item 2 of the Appendix III to the Provincial Council List refers to the supervision of the management of all pre-schools. The Parliament may pass a law limiting the maximum number of students in a class to be below 30 and setting down the minimum qualifications a pre-school teacher should possess. Although the subject matter is within the Provincial Council List, all Provincial Councils would have to adhere to the policy laid down by the Parliament. However, this will not shift the subject areas from the Provincial Councils List to the Reserved List. While the subject remains as an area within the

purview of the Provincial Councils, the administration of the subject will have to be carried out in conformity with the National Policy laid down by the Parliament.

Section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 deals with the jurisdiction of the High Court to hear appeals from orders under the Agrarian Services Act. According to this provision, a High Court of a Province shall have the power to exercise appellate and revisionary jurisdiction in respect of orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province. Sections 5 and 9 of the Agrarian Services Act are in Part I which consists of 25 sections (from section 2 to section 26) and deals with the tenant cultivators of paddy lands.

The question in the instant case as referred to earlier, arose over a decision the Commissioner for Agrarian Services had taken in terms of section 18 of the Agrarian Services Act, No. 58 of 1979. This section, which is in Part I of the Act, deals with the consequence of failure by a tenant cultivator to pay rent. Section 5 of the Act on the other hand deals with the rights of tenant cultivators, provision in regard to certain evicted tenants of paddy lands and restriction of eviction of tenants of paddy lands whereas section 9 provides for the Commissioner to decide disputes regarding devolution of rights to a tenant cultivator.

On a comparison of the provisions in sections 5, 9 and 18 of the Act, it is difficult to assess as to how appellate or revisionary jurisdiction on the Agrarian Services Act, could be restricted to only sections 5 and 9 of the Act. Furthermore, in terms of the provisions in section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, it is clear that sections 5 and 9 of the Agrarian Services Act are treated as matters which fall under the category of List I to the 9th Schedule to the Constitution, which is, as referred to earlier, commonly known as the Provincial Council List. If these two sections are within the Provincial Council List, it would not be feasible to separate section 18 of the Agrarian Services Act from them, as this too belongs to Part I of the said Act, which, as referred to earlier, deals with the tenant cultivators of paddy lands.

In the determination of the Supreme Court in the Agrarian Services (Amendment) Bill, the Court considered and examined the three Lists in the 9th Schedule to the Constitution as a whole in order to interpret them consistently and was of the view that,

> "The Bill quite clearly does not deal with any of the matters referred to in List I, items 9.2 and 9.3 or List III, items 8.1 to 8.3. Turning to List I, item 9.1 the Bill does not deal with 'agriculture, including agricultural extension, promotion and education for provincial purposes' or 'agricultural services'. It deals with the rights of tenant cultivators, the determination of disputes, the devolution of the rights of the tenant, the transfer of the rights of the landlord, the liability of tenants to eviction, the payment of rent, loans, surveys, information and statistics, farmer organisations and the like."

It is a well known principle that when the meaning of the statutory words is plain and unambiguous there is no necessity for a Court to attempt to interpret the meaning of such words. On the other hand when there are ambiguities in a statute, it becomes necessary to obtain an interpretation to clarify such ambiguities. As pointed out by Lord Wilberforce in *Fothergill* v *Monarch Airlines Ltd.*(2) "consideration of the purpose of an enactment is always a legitimate part of the process of interpretation" and "consideration of the purpose of an enactment" would clarify any ambiguities that would have arisen. In *AG of New Zealand* v *Oritz*(3) Staughton, J. referred to 'the power of the Courts to disregard the literal meaning of an Act and to give it a purposive construction'. When a strained meaning is given where the literal meaning is not in accordance with the legislative pupose of an enactment it would become necessary to examine the purpose of Parliament in passing the Act in question. As Bennion, suggests (*Statutory Interpretation*, 3rd edition, pg. 731), the "purpose or object of Parliament in passing an Act is to provide an appropriate *remedy* to serve as a cure for the *mischief* with which the Act deals". The legislative purpose of an enactment would have to be arrived at accordingly.

By the 13th Amendment to the Constitution as referred to earlier, the High Courts of the Provinces were empowered to exercise original criminal jurisdiction, revisionary jurisdiction as well as the writ jurisdiction. Section 3 of the High Court of the Provinces

(Special Provisions) Act, No. 19 of 1990 provided for the High Court to exercise appellate and revisionary jurisdiction in respect of orders made under sections 5 or 9 of the Agrarian Services Act, No. 58 of 1979 in respect of any land situated within that province.

According to Salmond (*Jurisprudence,* 10th edition, pp. 170-173):

> "The essence of the law lies on its spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it. Nevertheless in all ordinary cases the Courts must be content to accept the '*litera legis*' as the exclusive and conclusive evidence of the '*sententia legis*'. They must in general take it absolutely for granted that the Legislature has said what it meant, and meant what it has said. *Ita scriptumest* is the first principle of interpretation. judges are not at liberty to add to or take from or modify the letter of law, simply because they have reason to believe that the true in *'sententia legis'* are not completely or correctly expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable. To this general principle there are two exceptions. There are two cases in which the *'litera legis'* need not be taken as conclusive, and in which the '*sententia legis*' may be sought from other indications. The first of these cases is that in which the letter of the law is logically defective, that is to say, when it fails to express some single, definite, coherent and complete idea .... The second is that in which the text leads to a result so unreasonable that it is self-evident that the Legislature could not have meant what it has said .... *To correct the 'sententia legis' on logical grounds is a true process of interpretation; it fulfils the ultimate or dormant, if not the immediate or conscious intention of the Legislature (emphasis added).*"

At the time of the introduction of devolution of power in terms of the provisions of the 13th Amendment to the Constitution, the intention of the legislature was to empower the provincial centres to deal with the specific subjects devolved to such centres which included not only executive and legislative power, but also to devolve judicial functions to be carried out through the newly introduced High Courts of the Provinces. As referred to earlier, the High Courts were empowered to deal with appellate and revisionary

jurisdiction with regard to orders of Labour Tribunals and orders pertaining to sections 5 and 9 of the Agrarian Services Act, No. 58 of 1979. It is to be remembered that sections 5 and 9 also deal with tenant tultivators of paddy lands. The subject matter of "Tenant cultivators of paddy lands" does not relate directly to land matters such as transfer, registration, inheritance, partition and the like as set out in item 18 of List I read with the relevant part in Appendix II. More importantly it is to be considered that if a petitioner could come before the High Court of the Provinces, regarding a matter in connection with tenant cultivation in terms of sections 5 and 9 of the Agrarian Services Act, No. 58 of 1979, it is surprising that such a person cannot come under the jurisdiction of the High Court of the Provinces with regard to section 18 of the same Act. Such a narrow interpretation cannot be given to the provisions laid down in List I to the 9th Schedule to the Constitution, taking into consideration the unreasonableness in the application of section 3 of the High Court of the Provinces (Special Provision) Act, No. 19 of 1990 read with Part I of the Agrarian Services Act, No.58 of 1979.

One final point to be made before I part from this judgment. The learned Judge of the High Court, based his reasoning on the determination of the Supreme Court on the Amendment to the Agrarian Services Act, No.58 of 1979, as the Court had stated that "the matters dealt with in the Bill [are] all matters of national policy in regard to the rights and liabilities of owners and tenant cultivators, and this fall within List II". It is to be noted that the amendment *inter alia* dealt with section 5(3) of the principal enactment regarding inquires in respect of eviction of tenant cultivators. In terms of section 3 of the High Court of the Provinces Act, No. 19 of 1990 appellate and revisionary jurisdiction orders given under section 5 of the Agrarian Services Act is vested in High Courts of the Provinces, If so, it would not be correct to say that the matters which were dealt in the Bill are all matters of national policy that falls within List II.

Provincial Councils were established to permit the people to deal with their day to day life within the provinces itself. A tenant cultivator in any area within the country therefore should have the opportunity to challenge an order relating to the payment of agricultural rent in the High Court of the Provinces, instead of having to

come to Colombo to invoke the jurisdiction of the Court of Appeal. If section 3 of the High Court of the Provinces, (Special Provisions) Act, No.19 of 1990, in furtherance of the objects of the 13th Amendment provided for the appeals in respect of orders made in terms of sections 5 and 9 of the Agrarian Services Act to be made to the High Court of the Provinces and not to the Court of Appeal, there is no such justification for excluding applications relating to section 18 of the Agrarian Services Act.

The word 'agrarian' relates to landed property and such property no doubt would attract paddy lands and tenant cultivators of such land.

In the circumstances, it appears that the subject dealing with paddy lands falls within the ambit of the Provincial Council List and therefore the High Courts of the Provinces have the jurisdiction to issue orders in the nature of writs by virtue of the power given to them in terms of Article 154P of the Constitution.

For the aforementioned reasons both the questions on which leave to appeal was granted by the Court of Appeal are answered in the affirmative. This appeal is accordingly allowed and the Provincial High Court of the Central Province is directed to hear and determine the application made by the appellant.

There will be no costs.

SARATH N. SILVA, C.J. - I agree.

YAPA, J. - I agree.

Appeal allowed.