LAND REFORM COMMISSION
v.
HUSSAIN AND OTHERS

COURT OF APPEAL.
WIGNESWARAN, J.
C. A.NO. 174/86 (F).
D. C. COLOMBO NO. 4632/ZL.
AUGUST 26, 1996.

Land Reform Law – Section 21 of the Land Reform (Special Provisions) Act, No. 39 of 1981.

Orukande alias Orakande alias Dorakande Estate of 991 acres 2 roods 8 perches which belonged to the plaintiff-respondents vested in the Land Reform Commission with the coming into operation of the Land Reform Law, No. 1 of 1972 on 26.8.72 and the plaintiff-respondents then became statutory lessees of the said Estate. A notice under section 2 of the said Acquisition Act that the authorities intended to acquire the said estate for a public purpose was served on September 30, 1972 on the plaintiff-respondents i.e. 35 days after the Land Reform Law came into operation. Possession was taken over from the statutory lessees under the proviso to section 38 of the Land Acquisition Act by the Government Agent on 9.8.1973.

Held:

1. Section 21 of Act, No. 39 of 1981 must be interpreted to mean that lands which vested in some other authority in terms of the Land Acquisition must be deemed to have vested in the Land Reform Commission. Since lands acquired before 26.08.72 but after 29.05.71 were not lands vested in the Land Reform Commission, such lands only were vested in the Land Reform Commission provided no compensation had been paid as on 03.06.1981.

Statutory declarations could be made more than once.

Act, No. 14 of 1986 which amended section 21 has no retrospective effect. It came into operation from 20.08.1986. The plaint in the instant case was filed on 13.02.1984 and judgment was delivered on 27.03.1986 before Act, No. 14 of 1986 came into operation.

APPEAL from judgment of the District Court of Colombo.

P. G. Dep, Deputy Solicitor-General for defendant-appellant.

P. Nagendra, P.C. with *Miss S. M. Senaratne* and *A. J. M. Thahir* for plaintiff-respondents.

Cur. adv. vult.

January 24, 1997.
WIGNESWARAN, J.

This case depends on the interpretation of section 21 of the Land Reform (Special Provisions) Act, No. 39 of 1981.

It has been admitted that Orukande alias Orakande alias Dorakande Estate in extent of 991 Acres 2 Roods 8 Perches in the Kegalle District Sabaragamuwa Province, which belonged to the plaintiff-respondents vested in the Land Reform Commission with the coming into operation of Land Reform Law, No. 1 of 1972 on 26.8.72. In terms of the law the plaintiff-respondents then became statutory lessees of the abovesaid Estate.

It has been further admitted that a notice under section 2 of the Land Acquisition Act which declared the intention of the authorities to acquire the said Estate for a public purpose was served on 30th September 1972, thirty-five days after the Land Reform Law came into operation and possession was taken over from the statutory lessees under proviso to section 38 of the Land Acquisition Act on 9.8.1973 by the Government Agent, Kegalle (*vide* D2).

The purpose of the Land Reform Law was to establish a Land Reform Commission to ensure that no person shall own agricultural land in excess of a ceiling placed by the said law and to take over agricultural land owned by any person in excess of the ceiling, to utilize such land in a manner which will result in an increase in its productivity and employment generated from such land (*vide* section 2 of the Land Reform Law).

Section 13 of the said Law *inter alia* provided for the invalidation of any alienation of agricultural land in excess of the ceiling on or after 29.5.1971 which were in the opinion of the Land Reform Commission calculated to defeat the purposes of the Land Reform Law. Under section 13(6) of the Land Reform Law if an alienation was declared to be null and void, no right, title nor interest would pass to the alienee under the instrument of such alienation but such land shall vest in the Commission and the alienee was deemed to hold such land under a statutory lease from the Commission. Thus even though the relevant

date with regard to the Land Reform Law was 26.8.1972, section 13 extended the effect of the law to a period anterior to 26.8.1972.

Section 14 of the Land Reform Law made provision for inter-family transfers with regard to lands vested.

Section 18 required statutory declarations to be made in respect of agricultural land which became subject to a statutory lease under the provisions of the Land Reform Law.

Section 19 provided *inter alia* for statutory determination to be made by the Land Reform Commission specifying portion or portions of agricultural land owned by the statutory lessee which were to be allowed to be retained by such statutory lessee.

On 3.6.1981 Land Reform (Special Provisions) Act, No. 39 of 1981 was brought into operation amending the Land Reform Law, No. 1 of 1972 and making special provisions with regard to certain orders and determinations made under sections 13, 14 and 19 of the Land Reform Law. This Act also provided for matters connected therewith or incidental thereto.

Section 21 of the said Act reads as follows:–

21. (1) Where lands have been acquired under the Land Acquisition Act on or after May 29, 1971 and no compensation has been paid in respect of such lands, on the date of commencement of this Act notwithstanding anything in this Act or any other law, such lands shall be deemed to have been vested in the Commission under the Land Reform Law and accordingly, the owners of such lands shall be entitled to the rights of a statutory lessee under section 14 and section 18 of that law and may, within three months of the date of commencement of this Act, make a statutory declaration to the Commission.

(2) Where it is not practicable for the Commission to make a statutory determination under section 19 of the Land Reform Law in respect of any land vested in the Commission by virtue of subsection (1), specifying the portion of portions of the agricultural land owned

by the statutory lessee which he shall be allowed to retain, the Commission shall alienate to such statutory lessee, the maximum extent of agricultural land which may be owned by any person under the Land Reform Law or the extent of the land acquired from such statutory lessee under the Land Acquisition Act, whichever is less.

(3) Where it is not practicable for the Commission to grant approval for the transfer by the statutory lessee of any agricultural land under subsection (2) of section 14 of the Land Reform Law, the Commission shall alienate land to the extent of the land acquired from such statutory lessee under the Land Acquisition Act, to any child or to a parent of such statutory lessee.

(4) Where no compensation has been paid for the lands acquired under the Land Acquisition Act deemed to be vested in the Commission under subsection (1) and where no determination is made under subsection (2) or where no approval is granted under subsection (3), the statutory lessee shall be entitled to receive compensation for such lands under this Act.

It is the abovesaid section which comes into focus in relation to the facts of this case.

The Deputy Solicitor-General appearing for the defendant-appellant (Land Reform Commission) has argued that in view of the acquisition subsequent to the vesting the plaintiff-respondents are only entitled to compensation under the provisions of the Land Acquisition Act. It is his contention that the provisions of section 21 of Act No. 39 of 1981 above referred to, does not apply to the facts of this case and therefore there is no obligation on the part of the Land Reform Commission to act in terms of the provisions of the Land Reform Law as set out in section 21 abovesaid.

The learned President's Counsel appearing for the plaintiff-respondents has argued that in view of section 21 abovesaid the plaintiff-respondents are entitled to statutory determination and payment of compensation in respect of the excess land by the Land Reform Commission.

The learned Additional District Judge, Colombo by his judgment dated 27.03.1986 held in favour of the plaintiff-respondents.

When this case came up before my predecessors on 02.06.1995 it was journalised in the docket as follows:–

"02.06.95

BEFORE : WEERASEKERA, J. &
: DR. A. GRERO, J.

K. Paul, SC for Defendant-Appellant.

P. Nagendra, PC. with *Miss S. M. Senaratne* for plaintiff-respondent.

Mr. Paul, SC states that the Land Reform Commission would be liable to pay compensation in terms of Section 3(2) of the Land Reform (Special Provisions) Act, No. 39 of 1981 to an extent of 741 Acres, 2 Roods and 8 Perches which is the excess land that would have been vested in the Commission less the amount that would have to be given to each of the plaintiffs under sections 18 and 3(1) of the Land Reform Law No. 1 of 1972.

In regard to the balance Mr. Paul, SC. undertakes to explore the possibility of the plaintiffs being divested this extent in terms of sections 3 and 18 of the Land Reform Law., if it is out of this land or out of the other lands.

Mention on 15.07.95.

Signed................................"

Despite efforts made by the State Counsel to honour the settlement reached on 02.06.95 it appeared that the Land Reform Commission was reluctant to go with him. Hence this Court issued notice on the Directors of the Land Reform Commission on 18.01.96. Since a settlement was not favoured by the Commission the matter was fixed for argument.

"26.08.96

Before: Wigneswaran, J.

P. G. Dep. DSG with A. Gnanathasan SSC for defendant-appellant.

P. Nagendra PC. with Miss. S. M. Senaratne and A. J. M. Thahir for plaintiff-respondent.

Parties are heard. Since there are various details which are necessary both on law as well as facts. Court calls upon Counsel to tender written submissions. Meanwhile Court also calls upon the State Counsel to explore the possibility of giving statutory allotments under the Land Reform Law to the plaintiff from some other area other than the land acquired by the State. Mr. Dep DSG states that he will explore the possibility. He also states that he will give the details of the money deposited by the Government Agent.

Written submissions of the State for 30.09.96.

Written submissions of the respondent for 14.10.96.

Mention on 30.09.96.

sgd/ ...."

No details of money deposited by the Government Agent has been made available to Court nor any settlement been possible. This judgment therefore seeks to determine the matter in issue.

The arguments put forward by the Deputy Solicitor-General is as follows:-

(i) Section 21 of Act No. 39 of 1981 applies only to lands acquired after 29.05.1971 up to 26.08.1972 and where no compensation in respect of such lands had been paid before 03.06.1981.

(ii) In the instant case the acquisition took place after 26.08.1972 and the owner/owners became statutory lessees who tendered statutory declarations in terms of the law. No such declarations were necessary where the acquisitions were between 29.05.71 and 26.08.72 since the lands were not vested under the Land Reform Law. But declarations were needed in respect of such lands after the coming into operation of Act No. 39 of 1981 the reason being that lands acquired between 29.05.71 and 26.08.72 were in terms of the provisions of Act No. 39 of 1981 deemed to have been vested with the Land Reform Commission. Such a declaration was not necessary in respect of the case in hand because the acquisition was after 26.08.72.

(iii) Doubts were cleared by the passing of Act, No. 14 of 1986 which confirmed (i) said above.

(iv) Even if section 21 of Act No. 39 of 1981 were to apply to the case in hand under the provisions of section 21(4) the land acquired was handed over to National Agricultural Diversification and Settlement Authority (NADSA) and therefore only compensation under the provisions of the Land Reform Law would now become payable.

These submissions would now be examined.

(1) **Does section 21(1) of Act No. 39 of 1981 apply to acquisitions that took place after 29.05.1971 but only up to 26.08.1972?**

The purpose for which the amending Act, No. 39 of 1981 to the Land Reform Law was brought in was enumerated earlier in this judgment and section 21 was reproduced.

There is nothing in the said section that limits acquisitions that took place under the Land Acquisition Act to a period anterior to 26.08.1972. The only relevant factors stated are:

(i) Acquisition should have been under the Land Acquisition Act.

(ii) It should have been after 29.05.1971.

(iii) Compensation regarding such acquired lands had remained unpaid on 03.06.1981 (the date of commencement of the Act).

(iv) Notwithstanding anything in Act No. 39 of 1981 or any other Act or Law No. 1 of 1972 or any other Law, lands so acquired should be deemed to have vested in the Commission under the Land Reform Law.

Thus the interpretation to the phrase "deemed to have been vested in the Commission under the Land Reform Law" must mean that even though the authority on whom the lands vested under the provisions of the Land Acquisition Act were different, according to section 21 such lands must be deemed to have vested in the Land Reform Commission under the Land Reform Law. The learned Deputy Solicitor-General has sought to give the interpretation to the word "deemed" in relation to the land acquired and not the institution in which the vesting was reposed on. His position is that lands could have vested in the Land Reform Commission only after 26.08.72 (date of commencement of Law No. 1 of 1972) and therefore since lands acquired before 26.08.72 but after 29.05.71 were not lands vested in the Land Reform Commission such lands only were vested in the Land Reform Commission provided however that no compensation had been paid as at 03.06.1981.

This meaning though favourable to the Land Reform Commission is unduly restricted. A reading of section 21(1) gives the impression that the term "deemed" related to the Authority of vesting rather than the nature of land vested. If the Legislature intended to curtail the application of section 21 to lands acquired before coming into operation of Land Reform Law No. 1 of 1972 it would have so provided in Act No. 39 of 1981. In the absence of any such restrictive phraseology the words "deemed to have been vested in the Commission under the Land Reform Law" must be understood to refer to the Land Reform Commission as opposed to any other Authority in whom the Lands had vested. What it means is that in terms of section 21 lands which vested in some other authority in terms of the Land Acquisition Act must be deemed to have vested in

the Land Reform Commission. No restriction with regard to the lands so vested seems to have been contemplated in section 21.

Further section 19 of Act No. 39 of 1981 refers to determinations made after the coming into operation of the Land Reform Law. The amending Act No. 39 of 1981 itself was an act to amend Law No. 1 of 1972 to make special provisions with regard to certain orders and determinations made under sections 13, 14 and 19 of Law No. 1 of 1972 and matters connected therewith. Since section 19 refers to determinations made after the coming into operation of Land Reform Law No. 1 of 1972, in the absence of any restrictions placed in section 21 it would be improper to give a time limit until 26.08.1972 in interpreting section 21.

There is no doubt that the Legislature intended by the passing of Act No. 39 of 1981 to rectify injustices and anomalies that had crept in during the course of the implementation of Land Reform Law, No. 1 of 1972. The instrument or institution used by the Legislature to remedy the situation was the Land Reform Commission. If lands acquired under the Land Acquisition Act prior to the coming into operation of the Land Reform Law could be brought under the over-lordship of the Land Reform Commission it would be churlish to argue that Act, No. 39 of 1981 did not intend the Land Reform Commission to concern itself with lands vested in it and subsequently acquired under the Land Acquisition Act.

Thus the acquisition referred to in section 21(1) of Act, No. 39 of 1981 should not be interpreted to be limited to the period 29.05.1971 to 26.08.1972.

(2) **Would section 21 of Act, No. 39 of 1981 refer to acquisitions of lands between 29.08.1971 and 26.08.1972 only, since declarations were not contemplated in respect of these lands under the Land Reform Law while section 21 of Act, No. 39 of 1981 refers to a statutory declaration having to be made in respect of them?**

This again is a weak argument. The declarations contemplated under sections 18 and 19 of the Land Reform Law specifies what particulars *inter alia* are to be given (*vide* section 18(2) of the Land Reform Law). It relates to particulars as at the day immediately prior to the date of commencement of the Land Reform Law. If the acquisition took place long prior to such date (25.06.1972) but after 29.06.1971 those particulars referred to in section 18(2) may not be available with the former owner since the Acquisition authorities may have taken over possession. If the acquisition took place after 25.06.1972 as in the present case, again the particulars stated in section 18(2) may not be available with the statutory lessees since the Acquisition Authorities may have taken over possession after the declaration was made under section 18 of the Land Reform Law. Thus the statutory declarations contemplated in section 18(2) and section 21 of Act, 39 of 1981 are in effect different and therefore there is no sense in saying that a statutory declaration under section 18(2) having been made, a statutory declaration again under section 21 of Act, No. 39 of 1981 was not contemplated in law. There is nothing wrong in calling upon parties to make statutory declarations more than once depending on the circumstances for which the declarations have become necessary.

(3) **Effect of Act, No. 14 of 1986**

The learned Deputy Solicitor-General has referred to section 13 of Act No. 14 of 1986 which reads as follows:–

13. Section 21 of the principal enactment is hereby amended by the repeal of subsection (1) of that section, and the substitution of the following subsection therefor:–

"(1) Where any lands have been acquired under the Land Acquisition Act on or after May 29, 1971 but prior to August 26, 1972, being lands which had they not been so acquired, would have vested in the Commission under the Land Reform Law No. 1 of 1972 and in respect of which no award had been made on the date of commencement of this Act under section 17 of

the Land Acquisition Act, such lands shall, notwithstanding anything in this Act or any other law be deemed to have vested in the commission under the Land Reform Law and accordingly, the owners of such lands shall be entitled to the rights of a statutory lessee under section 14 or section 19 of that Law and may within three months of the commencement of this Act make an application to the Commission under section 14 of the Land Reform Law and under section 18 of the Land Reform Law a statutory declaration to the Commission."

This section came into operation from 20.08.1986. The plaint in this case was filed on 13.02.1984. The judgment was delivered on 27.03.1986. This section did not make itself applicable retrospectively. Under section 6(3) of the Interpretation Ordinance any repeal in the absence of any express provision to that effect would not affect the past operation of such Act and also would not affect any action or proceeding pending or incompleted when the repealing written law came into operation. Thus the restriction to obtain a statutory determination and compensation only to those lands acquired between the period 29.05.1971 and 26.08.1972 was made effective only from 20.06.1986.

The very fact that Act, No. 14 of 1986 was enacted shows the correctness of the interpretation given earlier to the provisions of section 21 of Act, No. 39 of 1981. The preamble to Act, No.14 of 1986 does not refer to any clarification found necessary in interpreting any provisions of Act, No. 39 of 1981.

It is to be noted that the restrictive interpretation placed by the learned Deputy Solicitor-General was ostensibly never in the contemplation of the Legislature when Act, No. 39 of 1981 was passed. If the Legislature had any such reservations it would have so enacted.

Therefore one must conclude that the Legislature preferred to restrict the rights of persons to obtain a statutory determination and compensation to those whose lands were acquired on or after

29.05.1971 and before 26.06.1972 only at a later point of time. That is probably why the Legislature did not make section 21 retrospective. If it was its intention to give retrospective effect to the section it would have done so clarifying the intention of the Legislature at the time of enactment of Act, No. 39 of 1981.

(4) **Since land had been handed over to NADSA after acquisition, would only compensation under Land Reform Law become payable?**

The learned District Judge in his judgment (*vide* pages 199-200 of the Brief) has stated that the defendant's position that subsequent to the acquisition the land was handed over to NADSA has not been established. He further referred to witness K. Weerasinghe who had stated that the Government Agent acquired the estate and later it was managed by a co-operative up to 1975 and thereafter by the Janawasama and only on 01.10.1978 it was taken over by NADSA and then subsequently the land was distributed among the villagers in lots. The judge goes on to say about witness Weerasinghe thus:–

> "This witness's evidence in my view is unsatisfactory. Not a single document has been marked in evidence to support his story".

There is no reason for this court to dispute the finding of the learned Additional District Judge.

The learned Additional District Judge had granted the reliefs prayed for in paragraphs (a), (b), (c) and (d) of the prayer to the plaint.

This court affirms his order and dismisses the appeal with taxed costs payable by the defendant-appellant to the plaintiff-respondent.

Appeal dismissed.