

**OFFICER-IN-CHARGE, POLICE STATION KOTAHENA
V.
DEWASINGHE AND ANOTHER**

COURT OF APPEAL
SENEVIRATNE, J., ABEYWARDENA, J. AND G. P. S. DE SILVA, J.
C.A. REVISION APPLICATION NO. 428/81
PRIMARY COURT OF COLOMBO
CASE NO. 99310/3
29 MARCH 1983.

Primary Courts Procedure Act No. 44 of 1979, Ss. 66, 67 and 68—Are time limits prescribed in Ss. 66 and 67 mandatory or directory?

Held —

Non compliance with the provisions of section 67(1) of the Primary Courts Procedure Act in regard to time limits will not vitiate the proceedings as these time limits are directory.

Cases referred to :

1. *Kanapathipillai Ramalingam v. Sinnathamby Thangarajah* — S.C. 6/82 — C.A./L.A. (SC) 5/82/CA Appln. No. 2463/80 — Primary Court Akkaraipattu Case No. 398.

APPLICATION for revision of order of the Judge of the Primary Court Akkaraipattu

H. W. Jayewardene, Q.C. with *S. L. Gunasekera* for 2nd respondent
V. S. A. Pullenayagam with *T. B. Dilimuni* and *Miss Mangalam Kanapathipillai* for 1st respondent-petitioner.

Cur. adv. vult

14 JULY 1983

SENEVIRATNE, J.

On 12/14.1.1980 the Officer-In-Charge Crimes Branch Kotahena Police Station filed an information in terms of section 66(1) (a)(i) of the Primary Courts Procedure Act No. 44 of 1979 in the Magistrate's Court of Colombo, informing the court that there was a dispute affecting land in respect of premises No. 478/07 Bloemendhal Road, Kotahena which was likely to lead to a breach of

peace among the respondents named in the information to wit- Nuwarapaksage Sisilin Dewasinghe 1st respondent-Petitioner and St. Elmo Gunasekera, Director, George Steuart & Company Ltd., 2nd respondent-respondent.

After the respondents filed their affidavits and submissions the learned Primary Court Judge commenced the inquiry on 17.8.1980. The recording of the evidence was concluded on 27.2.1981. Written submissions were tendered on 5.3.1981, and the order of the learned Primary Court Judge was delivered on 23.3.1981. There is no need to go into the facts of this case in detail. The evidence revealed that these premises had been what is known as "Keera Land", and according to the evidence a part was cultivated with keera and the rest was grassland. Both the 1st Respondent-Petitioner and the 2nd Respondent Elmo Gunasekera on behalf of George Steuart & Company limited claimed possession of the land. The learned Primary Court Judge adopted the correct test for the purpose of this inquiry under section 68(1) of the Act by stating that the matter for his determination was as to who was in possession of the land on the date of the filing of the information under section 66 ". Having considered the voluminous evidence led the learned Primary Court Judge held that as " on the date of the filing of the information " the 2nd Respondent Elmo Gunasekera on behalf of George Steuart & Company Limited, was in possession of the land, and made order on 23.3.1981 under Section 68(1) and 68(2) of the said Act Sisilin Dewasinghe 1st respondent-petition has filed this application in revision in this court to revise the said order made by the learned Primary Court Judge on 23.3.1981. The grounds on which this application is made are :—

- (a) That the judgment is contrary to the express provisions of section 67(2) of the Primary Courts Procedure Act and
- (b) There was a wrong finding on facts.

At the hearing of the application only the point off law in ground (a) that the judgment was contrary to the express provisions of section 67(2) of the Primary Courts Procedure Act was urged.

Section 67(2) is as follows:—" The Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry ". Before proceeding further, at this stage I will express my opinion on this submission even though such opinion will not materially affect this case. The recording of the evidence was concluded on 27.2.1981. Section 72(C) permits the Primary Court Judge to call for written submissions. In this instance written submissions has been filed on 5.3.1981. My view is that in respect of Section 67(2) the period of one week should be computed from 5.3.1981 as there is a statutory provisions for the Primary Court Judge to permit written submissions.

This application in revision came before a Bench of two Judges, and as there was a conflict in the judgments regarding the interpretation of Section 67(2) and as a disagreement arose between the two Judges constituting that Bench, this matter was referred to a Bench of three Judges in terms of Article 146(3) of the Constitution.

This matter came up before a Bench of three Judges on 29.3.1983. By that time the Supreme Court had delivered its judgment in the case of *Kanapathipillai Ramalingam v. Sinnathamby Thangarajah*,¹ (unreported case). In this Appeal, the Supreme Court made a ruling as to whether certain provisions of the Primary Courts Procedure Act, which I will refer to, were mandatory. In *Ramalingam's* case the information had been filed by the police on 10.12.1979, the inquiry commence on 17.9.1980, and was concluded by a settlement on 24.9.1980. Objection was taken to the proceedings of this case by the petitioner on the ground that as that inquiry was " not concluded " within three months of the commencement of the inquiry in accordance with the mandatory provisions of Section 67(1) the proceedings of that inquiry were a nullity. The immediate question of law which the Supreme Court had to deal with in *Ramalingam's* case was whether the provision of section 67(1) of this Act was directory or mandatory.

At the hearing of this application the learned Attorney-at-law for the 1st respondent-petitioner Mr. V. S. A. Pullenayagam submitted that in *Ramalingam's* case the Supreme Court held that the

provisions of section 67(1) were directory and that in that case the Supreme Court did not give a ruling on the nature of section 67(2) of the Act which is relevant to this application. The dicta pertaining to section 66 and Section 67(2) were made obiter. Mr. H. W. Jayawardane, Q.C. Attorney-at-law for the 2nd respondent submitted that the ruling of the Supreme Court in *Ramalingam's* case included a ruling on section 67(2) also, as its ratio decidendi.

I will now consider the above submissions made.

It is clear from the judgment of Sharvananda J. that though that appeal was specifically related to section 67(1) of the Act, the Supreme Court has considered the broader issue whether the violation of the mandatory provisions of part 7 of the Primary Courts Procedure Act makes the proceedings of the Primary Court null and void. Part 7 is the Chapter of the Act which deals with "inquiry into disputes affecting land", and where a breach of peace is threatened or likely. The mandatory provisions of this part 7 are section 66(3), 66(4), 66(5), 66(6), 66(7), 67(1) and 67(2). In dealing with the question as to whether these provisions were directory or mandatory, Sharvananda, J. stated as follows:— "The question was raised as to what was the consequence of the failure of the Judge to observe the time limits prescribed for various acts and steps leading to a determination and order under section 68 . . . It is to be noted that the statute does not declare what shall be the consequences of non-compliance by court with regard to this requirements as to the times prescribed by law". Sharvananda, J. having considered the provisions referred to above at length finally came to this conclusion — "I am, therefore, of the view that the provisions as to time limit in section 66 or 67 though the words "shall" suggest that they are mandatory should be construed as being directory and the non-compliance by Court of the provisions of section 66 or 67 of the Act does not divest the court of jurisdiction conferred on it by section 66(2) to make determination and order under Section 68". This dictum cited above from the said judgment clearly shows that the Supreme Court has considered the nature of the provisions of both sections 67(1) and 67(2). As such the judgment in *Ramalingam's* case cannot be restricted to a ruling

only on the nature and effect of section 67(1) of the Act. In view of the judgment referred to above, I hold that the non-compliance by the learned Magistrate of the provisions of section 67(1) of the Primary Courts Procedure Act has not vitiated the proceedings. The learned Primary Court Judge in the course of his order has in several instances stated as to why this inquiry could not be completed within the period of three months as specified in Section 67(1).

The application is dismissed.

ABEYWARDANE, J. — I agree.

G. P. S. DE SILVA, J. — I agree.

Application dismissed.