

Podisingho  
v.  
Chandradasa

COURT OF APPEAL,  
COLIN THOME, J. AND ATUKORALE, J.  
C.A. (S.C.) 89/78—M.C. HORANA 26498.  
OCTOBER 10, 1978.

*Administration of Justice Law, No. 44 of 1973, sections 62, 63—Dispute affecting land—Duty of Magistrate himself to enquire and determine question of possession—Agreement to refer matters to third party for settlement—Need for an order by Magistrate under section 63 (8) even thereafter.*

**Held**

(1) Under sections 62 and 63 of the Administration of Justice Law, No. 44 of 1973, it is clear that it is the duty of the Magistrate himself to inquire into and find out as to who was in actual possession of the land in dispute at the relevant time and there is no provision for him to delegate the decision of this question to anyone else.

(2) However, although such requirement had not been observed in the present case, both parties had agreed not only to the procedure adopted to settle their dispute but also to the manner of settlement by a third party to whom it was referred and neither party should in these circumstances therefore be permitted to resile therefrom. Nevertheless it was incumbent on the Magistrate himself even after the reference for settlement in this manner to make an order in terms of section 63 (8) in accordance with the terms of settlement agreed on.

APPLICATION to revise an order of the Magistrate's Court, Horana.

*N. S. A. Goonetilleke*, for the petitioner.  
*W. P. Gunatilleke*, for the 1st respondent.

*Cur. adv. vult.*

October 31, 1978.

**ATUKORALE, J.**

This is an application to set aside all orders made by the learned Magistrate after 20.10.1977 in proceedings which commenced under section 62 of the Administration of Justice Law, No. 44 of 1973. The 2nd respondent who was the officer in charge of Ingiriya Police Station made an application to court under section 62 of the above Law making the 1st respondent as complainant and the petitioner as respondent in relation to a dispute over the right to possess a paddy field called Udakumbura Pitakattiya. The learned Magistrate ordered notice to issue as prescribed under section 62 and fixed the inquiry for 23.11.1977 and directed the parties to furnish their written statements of claim on or before that date. On 23.11.1977 parties were present and they were represented by Counsel. On that day parties agreed that their respective rights should be settled by the officer of the Agrarian Services Department. The officer was to devise a mode of possession by the parties who were to possess in accordance therewith. On the same day the learned Magistrate also made an order prohibiting parties from acting contrary to the said mode of possession. Thereafter on 1.12.1977 the officer inquired into this matter and submitted a report to the court. According to the report, the 1st respondent had complained to the Assistant Commissioner of Agrarian Services that he was the *ande goviya* of the paddy field and that he had been evicted by the petitioner. After inquiry an order had been made by the Assistant Commissioner directing that the petitioner should vacate the field and hand over possession of the same to the 1st respondent. As the petitioner failed to do so, he had been prosecuted in Case No. 755 of the Magistrate's Court of Horana. On an order of court in that case possession was reported to have been handed over to the 1st respondent on 29.7.1971. But as the field had been sown with paddy at the time, the 1st respondent had not entered in to immediate possession. After the paddy was harvested when the 1st respondent attempted to work the field the petitioner had refused to allow him to do so. Thereafter the 1st respondent had made several complaints to various officers but no action had been taken. On 26.3.1975 the 1st respondent had made a complaint under the Agricultural Lands Law, No. 42 of 1973, but it had been dismissed on the ground that the complaint had been made more than a year after the date of eviction. After setting out these facts in his report the officer expressed his belief that the 1st respondent had a present right to possess the field in view of the order made by the Magistrate's Court on 29.7.1971 and

and as such he took the view that the petitioner should reap the standing crop and he should on or before 1.3.1978 hand over possession of the field to the 1st respondent. After the officer sent his report to court, the case was called on 18.1.1978. On that day a motion signed by Counsel for both parties was tendered to court stating that the parties are agreeable to implementing the decision of the officer subject to the provisions of section 65 of the Administration of Justice Law. The learned Magistrate ordered this motion to be filed of record. Thereafter on 10.2.1978 the present application for revision was made by the petitioner.

Learned Counsel for the petitioner submitted that the inquiry under section 62 has to be held by the Magistrate and no other Tribunal or person and that the Magistrate cannot delegate that power even with the consent of parties. He submitted that therefore the order of the officer embodied in his report is invalid and/or of no force or avail in Law. Learned Counsel for the 1st respondent on the other hand strongly urged before us that both parties agreed that the dispute should be settled by the officer of the Agrarian Services Department and that they appeared before him and took part in the inquiry and later tendered a joint motion agreeing that the decision of the said officer should take effect subject however to the provisions of section 65. In view of these facts he maintained that this application should be dismissed.

The object of section 62 of the Administration of Justice Law is to prevent breaches of the peace arising out of land disputes. On a perusal of sections 62 and 63 it is clear that it is the duty of the Magistrate himself to inquire into and find out as to who was in actual possession of the land in dispute at the relevant time. There is no provision for a Magistrate to delegate the decision of this question to anyone else. But under section 63 (8) parties concerned in the dispute can agree on the terms upon which they will resolve their dispute. It is apparently under this sub-section that the parties in this case requested this dispute relating to their possession be referred to the officer of the Agrarian Services Department for a settlement. But the settlement decided upon by the officer goes far beyond the scope of section 63. He reported that the first respondent should be restored to possession of the field for all time. But when the report of the officer was sent to court the parties filed a joint motion in which they stated that they were agreeable to implementing the officer's recommendation subject to the provisions of section 65 that is to say without prejudice to their respective rights in a civil action. It thus became incumbent on the

Magistrate to consider making an order in terms of section 63 (8) in accordance with the terms of settlement the parties had agreed upon.

This the learned Magistrate has failed to do. His order made on 23.11.1977 prohibiting parties from acting contrary to the mode of possession that the officer would make is not an order which is contemplated under section 63. The provisions of that section make it quite clear that the order should contain a declaration and a prohibition and, if necessary, a direction and should name the persons entitled to the benefit thereof.

In view of the fact that both parties had agreed not only to the procedure adopted to settle their dispute but also to the manner of its settlement we do not think that either party should now be permitted to resile therefrom. We, however, direct that the record be sent back to the learned Magistrate to enable him to make an appropriate order in terms of section 63 (8) of the said Law, on the report sent to court by the officer after hearing the parties. This order will no doubt be of a temporary nature without prejudice to the rights of parties until they are finally adjudged by a court or Tribunal of competent jurisdiction.

**COLIN THOME, J.**—I agree.

*Sent back.*