ADIKARAM
v.
RATNAWATHIE BANDARA AND ANOTHER

COURT OF APPEAL
A. DE Z. GUNAWARDANA, J.
C.A. 99/75
DECEMBER 5, 1989, FEBRUARY 20, 1990 AND MARCH 20, 1990

Agricultural Lands Law, section 54, – Definition of owner cultivator — Cultivation not a requirement as in the amended Paddy Lands Act or Agrarian Services Act — Effect of deeming provisions — Rule against interpreting statutes retrospectively to affect acquired rights.

The Complainant — Appellant made a complaint to the Assistant Commissioner of Agrarian Services Kandy, stating that he had been evicted from the field called Galpoththe Kumbura by the respondents on 21.3.1974. The Agricultural Tribunal after inquiry, held that the provisions of the Land Development Ordinance do not permit, a permit holder to allow another person to work as an Ande Cultivator, in the allotted land. The said Tribunal further held that the definition of "owner cultivator" in the Agricultural Lands Law does not envisage the existence of an Ande cultivator and therefore dismissed the application of the complainant-appellant.

Held :

(1) That the definition of "owner cultivator" in the Agricultural Lands Law is different to the definition of "owner cultivator" in the amended Paddy Lands Act and the Agrarian Services

Act. That the status of "owner cultivator" under the Agricultural Lands Law has been conferred on a person to whom the land has been alienated under the Land Development Ordinance and does not require that he should cultivate the said land.

(2) That the fiction created by a deeming provision must be given effect to by the Courts in the form and in the manner contemplated by the relevant statute.

(3) That the doctrine of respect for "acquired rights" has been given recognition as a general principle of law not only in Municipal Law but also under International Law, and that a statute should not be interpreted retrospectively, to affect acquired rights.

Case referred to:

Re Athlumney (1898) 2 QB 551, 552.

APPEAL from order of Agricultural Tribunal.

A. P. Guneratne with *Miss S. M. Senaratne* for Complainant - Appellant.

L. C. Seneviratne P.C. for Respondent-Respondents.

Cur.adv.vult.

June 1, 1990.

A. DE Z. GUNAWARDANA, J.

This is an appeal from an Order made by the Agricultural Tribunal of Kandy dated 28.10.1975, dismissing the application made by the Complainant-Appellant regarding his eviction from the field called Galpoththe Kumbura.

The Complainant-Appellant made a complaint to the Assistant Commissioner of Agrarian Services, Kandy on 9.5.74 stating that he had been evicted from the said field by the Respondents on 21.3.74. In consequence of the said complaint the Agricultural Tribunal of Kandy held an inquiry, at which the Complainant-Appellant gave evidence on his own behalf. The Complainant-Appellant in his evidence has stated that his father worked the said field as an ande cultivator and after his father's death he continued to cultivate the said field as an ande cultivator till he was evicted by the Respondents on 21.3.74. The Complainant-Appellant called one A. M. Heennilame, Secretary of the Cultivation Committee, to prove that according to the entries in the Agricultural Lands Register his name has been entered as the ande cultivator for the said field for the years 1972/74. The Complainant-Appellant also called one Punchibanda Ekanayake, the ex-President of the Urapola Cultivation Committee, who stated that to his knowledge, the Complainant-Appellant worked in this field as the ande cultivator.

On behalf of the Respondents, the 2nd Respondent Robert Bandara gave evidence and stated that, this field was allotted to his father under a permit granted under the Land Development Ordinance, and after his death, it devolved on his mother Maraya Loku Kumarihamy. In 1969, the said paddy field was gifted to him by his mother by a deed, which was produced marked V(1). He produced the receipts for the payment of rents to the Kachcheri, from 1974, marked V(2) to V(5). Witness Siriweera Gamage, a clerk, attached to the Kandy Kachcheri, has produced relevant documents in regard to the permit issued to the 2nd respondent's father, in respect of this field. This permit has been issued in 1955. The witness Wilson Bandara Diyakelinawela who gave evidence on behalf of the Respondents has stated that he worked his field from 1956 to 1962. Thereafter he had gone away to a place called Sirimalwatta, having handed over the field to his mother. After he left, his mother had worked this field with the assistance of the Complainant-Appellant, Ukkubanda, Ekanayake and others as hired labourers. There was no ande rights given to anybody in respect of this field. After his father's death in 1959 his mother managed the field and he cultivated the field on behalf of his mother. Thereafter his brother took over the cultivation of the said field.

The Agricultural Tribunal having considered the above evidence has held that the said paddy land had been given to the father of the 2nd Respondent, Tikiri Banda Diyakelinawela on a permit issued in 1955 and that the Complainant-Appellant had worked as an ande cultivator under the said Robert Bandara Diyakelinawela. However the Tribunal has held that the provisions of the Land Development Ordinance does not permit a permit holder to allow another person to work or improve a land given under the said Ordinance. The Tribunal has further held that in view of the definition of "owner cultivator" under section 54 of the Agricultural Lands Law, No. 42 of 1973, there cannot be an ande cultivator in respect of this field and therefore had dismissed the application of the Complainant-Appellant.

The Counsel for the Complainant-Appellant argued that the said Tribunal has misdirected itself in holding that section 54 of the Agricultural Lands Law does not envisage the existence of an ande cultivator. The Counsel for the Complainant-Appellant in support of his contention cited two judgments of unreported cases of the Supreme Court viz: S.C. Appln. No. 957/73 — M.C. Kurunegala 78995 and S.C. Appln. No. 217/77 — M.C. Hambantota 81213. It has to be pointed out at the out set itself, that

the said two judgments were cases decided under the Paddy Lands Act, No. 1 of 1958, and therefore have no application to the instant case as the definition of owner cultivator under the Agricultural Lands Law, No. 42 of 1973 (which is the law applicable to the case) is different.

In this context it would be appropriate to refer to the definition of owner cultivator in the Paddy Lands Act and its subsequent amendments and variations in the subsequent acts. The Paddy Lands Act, No. 1 of 1958, which came into force on 1.2.58 defines owner cultivator as follows:—

> " 'owner cultivator' with reference to any extent of paddy land, means the person who is the owner or usufructuary mortgagee of such extent and who is the cultivator of the entirety of such extent."

However the definition of "owner cultivator" contained in the Paddy Lands Act, No. 1 of 1958, as amended up to 31.12.1965, is as follows:—

> " 'owner cultivator' with reference to any extent of paddy land, means the person who is the owner or usufructary mortgagee of such extent and who is the cultivator of the entirety of such extent, *and in the case of an extent of paddy land which has been alienated under the Land Development Ordinance, the person who derives title to such extent from or under that Ordinance and who is the cultivator of the entirety of such extent, shall be deemed to be the owner cultivator of that extent:*"

It is seen that the words italicized in the above definition have been added to the original definition of "owner cultivator" contained in the Paddy Lands Act No. 1 of 1958, by subsequent amendment. The said amendment has brought in the Land Development Ordinance with a view of excluding the land alienated under the Land Development Ordinance from the operation of the Paddy Lands Act. However two requirements are necessary for such exclusion, viz:—

(1) the person who derives title to such extent should have obtained that title under the Ordinance.
(2) Such person should cultivate the entirety of such extent. When the said two requirements are fulfilled such a person would be deemed to be the "owner cultivator".

It is significant to note that the said definition in the Paddy Lands Act, as amended upto 31.12.65, has not been adopted in the Agricultural

Lands Law No. 42 of 73 which replaced the Paddy Lands Act, and which Act came into force on 17.10.1973. According to the Agricultural Lands Law an "owner cultivator" has been defined as:—

> " 'owner cultivator', with reference to any extent of paddy land means the person who is the owner or usufructuary mortgagee of such extent and who is the cultivator of the entirety of such extent and in the case of an extent of paddy land which has been alienated under the Land Development Ordinance, the person who derives title to such extent shall be deemed to be the owner cultivator of that extent."

It is important to note here that the words"..... and who is the cultivator of the entirety of such extent" have been omitted from this definition. This would mean that the requirement under the Amended Paddy Lands Act that the permit holder under the Land Development Ordinance should also be the cultivator of the entirety of such extent has been done away with under the Agricultural Lands Law. This change is significant to this case because according to the evidence, the respondents have not cultivated this field by themselves. The Agricultural Tribunal has held that the Complainant - Appellant has worked this field as an ande cultivator. However, in view of the fact that the Agricultural Lands Law does not require the permit holder to cultivate the said field in order to be considered the "owner cultivator", the permit holder would be deemed to be the owner cultivator in terms of the Agricultural Lands Law. It must be pointed out here that the law applicable to this case is the Agricultural Lands Law, No. 42 of 1973, which was the law in force at the time the present dispute arose on 21st March, 1974.

When one looks at the Agrarian Services Act, No. 58 of 1979, which came into force subsequently, on the 25th September, 1979, it appears that omission of the said words I have referred to above in the Agricultural Lands Law, No. 42 of 1973, by the legislature, is deliberate. The definition of "owner cultivator" in the Agrarian Services Act, No. 58 of 1979, is as follows:-

> "'owner cultivator' with reference to any extent of paddy land means the person who is the owner or usufructuary mortgagee of such extent and who is the cultivator of the entirety of such extent and in the case of an extent of paddy land which has been alienated under the Land Development Ordinance, the person who derives title to such extent

and who is the cultivator of the entirety of such extent shall be deemed to be the owner cultivator of such extent:"

Thus we see that the words"..... and who is the cultivator of the entirety of such extent", have been reintroduced into the definition of the owner cultivator in the Agrarian Services Act, No. 58 of 1979.

Hence the argument of the Counsel for the Complainant-Appellant that the Respondents having not cultivated the said field were not entitled to be considered owner cultivators of the said field, would fail, because as pointed out earlier under the definition of owner cultivator in the Agricultural Lands Law, No. 42 of 1973, the requirement of cultivation by the permit holder had been omitted, to qualify to be an owner cultivator.

The definition of "owner cultivator" in the said Acts are deeming provisions. Bindra on Interpretation of Statutes (7th Edition) at page 1114 states:-

> "The phrase 'shall be deemed' is frequently used in statutes when a legislature wants to confer a status or an attribute to a person or thing which is not intrinsically possessed by that person or thing on whom this conferment is made. This phrase is commonly used in statute to extend the application of a provision of law to a class not otherwise amenable to it. It implies that the Legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. It is not open to a Court to sit in judgment over the judgment of the Legislature and ignore the express direction contained in the statute on the ground that the person on whom a status in conferred by statutory fiction is not the real person and so it cannot refuse to recognise him as such person. The important thing is not the meaning of the word 'deemed' but the effect of its use in the statute."

Thus it is to be seen that the status of owner cultivator under the Agricultural Lands Law has been conferred on a person to whom the land has been alienated under the Land Development Ordinance and does not require that he should cultivate the said land. Therefore the fiction created by the said Law must be given effect to by the Courts in the form and in the manner contemplated by the said Law. Accordingly on the facts proved in this case the Respondents are deemed to be the owner cultivators of the said field. The resulting position is that when there is an owner cultivator to a certain field there is no possibility of there being an ande cultivator. It was on that basis that the Agricultural Tribunal has held

that the Complainant - Appellant could not be an ande cultivator of the said field. Therefore in my view the said Order of the Agricultural Tribunal is justified in law.

The Counsel for the Complainant -Appellant further submitted that the provisions of section 67(2) (i) of the Agrarian Services Act which states that-

> "All proceedings pending in Court under the provisions of the Agricultural Productivity Law, No. 2 of 1972 or the Agricultural Lands Law, No. 42 of 1973, on the date prior to the date of commencement of this Act shall be heard and concluded under the provisions of this Act:"

applies to this case. The said section 67(2)(i) is a repeal and savings clause in the Agrarian Services Act. Such a provision is made to ensure the continuity of pending proceedings which have been commenced under a repealed act. Such provisions do not in my view create new rights or do not affect the acquired rights of the parties concerned.

The doctrine of respect for "acquired rights" has been given recognition as a general principle of law, not only under the Municipal Law, but also under International Law, (See Lord McNair, 33 British Year Book of International Law (1957) page 1). Acquired rights have been defined by O' Connel as follows:-

> "Acquired rights are any right, coporeal or incoporeal property vested under Municipal Law in a natural or juristic person and of an assessable monetary value (See O' Conner International Law, Vol. 2, (Second Edition, London 1970) page 763.)"

It is a recognised rule of interpretation that the repealing Act would not affect any right, privilege, or obligation, or liability acquired, or accrued or incurred under any enactment, so repealed. This principle has been given effect to under our law by the provision made in section 6 (3) (b) of the Interpretation Ordinance which states:

> "6 (3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -
>
> (a) .....

(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law:"

The Counsel for the Respondents argued that the Respondents have acquired the right under the Agricultural Lands Law to be considered as owner cultivators although they may not have cultivated the full extent of the paddy field on their own, because the definition of the owner cultivator under the said Agricultural Lands Law does not require that they should cultivate the land. He submitted that they had proved in the present case that they are the lawful holders of this said paddy field under a permit granted by the Land Development Ordinance and therefore in terms of the said Agricultural Lands Law they are deemed to be the owner cultivators.

The Counsel for the Respondents also pointed out that it is a well known canon of interpretation that statutes should be interpreted prospectively and not retrospectively. Maxwell on Interpretation of Statutes (12th Edition) at page 251, states as follows:-

"Statutes which encroach on rights of the subject, whether as regards a person or property, are subject to a strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted. One aspect of this approach to legislation is the presumption that a statute does not retrospectively abrogate vested rights, another is the presumption that proprietory rights are not taken away without provision being made for compensation."

If a statute is to be given effect to retrospectively, it must be stated so, expressly. The provision in section 67(2)(i) of the Agrarian Services Act, relied on by Counsel for the Complainant-Appellant, to give a retrospective effect to the provisions of the said Act, in my view, is only intended to maintain continuity of proceedings pending in any Court. The said provision is not intended to take away the vested or acquired rights of any person under the repealed Act, as it has not expressly stated so. Maxwell (see page 216) points out that "one of the most well - known statements of the rule regarding retrospectivity is contained" in the following passage from the judgement of R. S. Wright J. in *Re Athlumney (1)* :

"'Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

Thus it is seen that a well recognised rule of interpretation also militates against attributing a retrospective effect to the provision in section 67(2)(i) of the Agrarian Services Act.

In the circumstances I am of the view that there is no reason to interfere with the said Order of the Agricultural Tribunal. Therefore the said Order of the Agricultural Tribunal dated 28.10.1975 is hereby affirmed and the appeal is dismissed with costs fixed at Rs. 210/=.

Appeal dismissed.