REV. MAIYAWE SADDHANANDA THERO
v.
RATNAYAKE

SUPREME COURT.
WANASUNDERA, J. RANASINGHE, J. AND ABDUL CADER, J.
S C. APPEAL No 44/83 – D.C CHILAW No. 20386.
NOVEMBER 26, 1984

Land Development Ordinance, Sections 56, 33 and 170 – Land held by a Buddhist monk on a grant under the Land Development Ordinance – Succession under s. 170 of the Land Development Ordinance – Operation of ss 20 and 23 of the Buddhist Temporalities Ordinance.

The land in dispute belonging to the State had been granted under the Land Development Ordinance to Rev. Maiyawe Saddhananda Thero by Grant P1 dated 7.7.1955. In 1955 the grantee nominated his mother as his successor to the holding in terms of section 56 of the Land Development Ordinance. The mother predeceased the grantee in February 1967. The grantee died on 1.7.1976 without making any further nomination. A dispute to title to the land then arose between the defendant who was the lay brother of the deceased monk and the plaintiff Viharadhipathy of the temple to which the deceased monk belonged. The plaintiff claimed the land in terms of section 23 of the Buddhist Temporalities Ordinance on the basis that the land should be deemed to be the property of the temple. The defendant however claimed that the land being a protected holding held under the conditions and restraints imposed by the Land Development Ordinance, the later statute, section 170 of the Ordinance applied to bar any mode of succession other than that provided in the Ordinance itself from being applied. Further doctrinally this land could not be considered *Sanghika* as the holder lacked full title.

Held – (Ranasinghe, J. dissenting).

Section 23 does not prescribe a mode of succession as such but rather seeks to effect a transformation of the character of the particular property by which it becomes deemed to be the property of the temple. It is a legal fiction that operates and it is not necessary to decide whether the property is in fact *sanghika* or not. Therefore section 23 of the Buddhist Temporalities Ordinance must be given effect to rather than section 170 of the Land Development Ordinance.

A. C Gooneratne, Q.C. with *K. S Tillekeratne* and *Mrs. H Jayalath* for plaintiff-appellant.

Walter Wimalachandra with *S C B Walgampaya* for defendant-respondent.

Cur. adv. vult.

December 14, 1984.

WANASUNDERA, J.

The plaintiff in his capacity as the Controlling Viharadhipathi of Ratnagiri Rajamaha Vihara, Nalladarankattuwa, sued the defendant for a declaration of title to a land called Wilpatha Mukalana, the subject-matter of the action, and for ejectment of the defendant and for damages.

This land had been granted to one Rev. Maiyawe Saddhananda Thero of this same temple on Crown Grant P1 dated 7th July 1955.

In 1955, the Grantee had nominated his mother as his successor to the holding in terms of section 56 of the Land Development Ordinance. His mother Menikhamy however died in February 1967, predeceasing the Grantee who died nine years later on 1st July 1976 without making any further nomination.

Upon the Grantee's death, two rival claims emerged in respect of his interests : one by the temple authorities to which the Grantee belonged, and the other by the defendant – the lay brother of the Grantee. Hence this action. Both those rival claims are, each founded on a different statutory provision and the issue before us is to ascertain which one of these statutory provisions should prevail over the other.

The plaintiff-appellant relies on section 23 of the Buddhist Temporalities Ordinance (Cap. 318), which is worded as follows :–

> "All *pudgalika* property that is acquired by any individual *bhikkhu* for his exclusive personal use, shall, if not alienated by such *bhikkhu* during his life-time, be deemed to be the property of the temple to which such *bhikkhu* belonged unless such property had been inherited by such *bhikkhu*."

Mr.Gooneratne for the appellant has submitted that all the requirements of this section are satisfied in this case and the allotment has now become the property of the Temple and accordingly that the plaintiff-appellant is entitled to vindicate title to it.

The defendant-respondent on the other hand relies on the provisions of the Land Development Ordinance. Mr. Wimalachandra relied in particular on the provisions of section 170 of the Land

Development Ordinance and generally on the other provisions of that Ordinance. Section 170 indicates a special mode of succession and excludes the application of any other mode of succession. He further submitted that a Grant under the Land Development Ordinance gives only limited ownership and also restrains alienation except in the controlled manner provided by the said Ordinance, and all these provisions were incompatible with the concept of *sanghika* property and excluded the application of section 23 of the Buddhist Temporalities Ordinance to the devolution of title to an allotment under the Land Development Ordinance. He also said that the Land Development Ordinance is later in date to the Buddhist Temporalities Ordinance and had been specifically enacted for the alienation and development of Crown land and was entitled to prevail over the other Ordinance in case of a conflict.

This land had first come into the possession of Rev. Maiyawe Saddhananda Thero in 1942, during the time of the Second World War, when he was issued a temporary permit by the Assistant Government Agent, Chilaw, under the Emergency (Food Production) Regulations. Thereafter, in 1944, the monk who was possessing this land on this permit had been given specific permission to have a permanent plantation on this allotment. In 1949, after the war was over, Rev. Maiyawe Saddhananda Thero obtained a permit under the provisions of the Land Development Ordinance in respect of this same allotment. This permit had been issued to the monk not as representative of the temple, but in his individual capacity as a monk. I have something further to say on this matter later.

We know that under the provisions of the Land Development Ordinance the issue of a permit is generally the first step in the process of the alienation of Crown land. The second step consists in the issue of a formal Grant. In 1953 Rev. Saddhananda applied for a Grant but at that stage the authorities were not prepared to issue him a Grant, because as D5 puts it, "it is not the policy to alienate land to Buddhist priests under the L.D.O.". However, a few years later, in 1955 Rev. Saddhananda succeeded in obtaining a Grant, which is signed by no less a person than the Governor-General and authenticated by the Seal of the Island. This apparently shows a change of policy on the part of the Government, and if so, this issue of a Grant to a monk must carry with it all consequences that are associated with his status

As stated earlier, in September 1958, the Grantee had nominated his mother as his successor in accordance with the provisions of the Ordinance. In the meantime he had developed the land with a permanent plantation of coconut It is not disputed that the improvement was effected by him using moneys belonging to the temple. Originally the monk had nominated his mother as his successor but after his mother's death he had expressed a desire to have the allotment vested in the temple upon his own death. This was apparently a firm conviction on his part, for he had even communicated this intention to the Land Commissioner and had requested that this wish be given effect to. The authorities had however put him off by giving him some gratuitous advice to the effect that such a course of action was not legally possible –D15. Whether or not this is so, it seems to us, is essentially a legal question to be decided by a court of law. So that, at or about the time of his death, Rev. Saddhananda has had a strong desire to see that this property should go to the temple and not to his lay relations or to an outsider.

The Grant P1 embodies all the conditions set out in the First Schedule to the Ordinance as required by the law. It also contains a provision for the payment of an annual rent of Rs. 48.50. An examination of the other conditions shows that P1 embodies only a few of the conditions of the Second Schedule, namely items 4 and 7 only. Section 33 states that the incorporation of the conditions in the Second Schedule is optional. One significant omission may be noted and this is item 5 of the Second Schedule which requires the owner to reside on the allotment.

It appears to me that there is nothing in the conditions embodied in P1 that makes it burdensome or incompatible with the status of a Viharadhipathi of a temple for the property to be vested in him on behalf of the temple. In fact, he had been, in his capacity as a monk let into possession as a permit holder and had been possessing the allotment for a number of years without complaint from the authorities that his possession was inconsistent with his status as a monk.

The Court of Appeal in its judgment has drawn attention to the fact that a land alienated by the Government by way of Grant under the Land Development Ordinance becomes a protected holding. In respect of such a protected holding, the Ordinance has imposed a

number of conditions and restraints. A disposition (meaning any transaction of whatever nature affecting the land or its title) requires the written consent of the Government Agent. Similarly, a lease or mortgage of the protected holding would also require the prior written consent of the Government Agent. The law also provides that a protected holding cannot be seized and sold in the execution of a decree of any court. The main fetter however is in respect of the devolution of title to the holding by way of succession. The law seeks to ensure that there is no fragmentation of the land and that as far as possible the allotment would remain intact and without division in the family of the original Grantee. However, the line of permitted succession set out in the Third Schedule follows more or less the line of the general mode of succession upon an intestacy in ordinary law. Any mode of succession outside this, except with the prior written consent of the Government Agent, would be unlawful under the Ordinance.

At this stage I would like to say that much of those provisions relating to succession appear to be inapplicable to the case of a Buddhist monk, although the Grant had been made after due consideration not to a layman, but to Rev. Saddhananda in his capacity as a Buddhist monk. The fact that he did not represent the temple is immaterial. In my view, it is the failure to accord to Rev. Saddhananda his true status as a monk that has led to so much confusion in this case. The Grant was undoubtedly made to the monk in his individual capacity and not as representative of the temple. But, this in no way means that Rev. Saddhananda could be placed in the position of a layman in relation to this Grant. He received the Grant not as a layman but as a monk, and all incidents that appertain to a monk must be taken care of and provided for in the course of his dealings with this land in so far as the legal provisions permit it.

Mr. Wimalachandra however emphasised the implications of the provisions of section 170 of the Land Development Ordinance and relied on it as his main submission. It is worded as follows :-

> "(1) No written law (other than this Ordinance) which provides for succession to land upon an intestacy and no other law relating to succession to land upon an intestacy shall have any application in respect of any land alienated under this Ordinance.

(2) No person shall, by virtue of any appointment in any last will, have or acquire any title to succeed to any land alienated under this Ordinance save and except a life holder or a successor duly nominated by last will under the provisions of Chapter VII."

He stressed the absolute nature of the prohibition contained here and submitted that the present case is undoubtedly a case of succession since it involves the manner of the devolution of the land upon the death of Rev. Saddhananda. He submits that in the face of this provision no other mode of succession contained in the written or unwritten law is entitled to prevail.

Mr. Gooneratne's reply was characteristically brief. He submitted that section 23 of the Buddhist Temporalities Ordinance on which he relies is not a provision relating to succession but of an entirely different nature. Section 23, he submits, contains a presumption which has the effect of transforming property of one character to another on the happening of an event, namely, *pudgalika* property into temple property, if it is not alienated during the life-time of the monk. I am inclined to agree with Mr. Gooneratne that section 23 seeks to effect a transformation in the character of a property by operation of law and does not deal with succession as such. Undoubtedly a law of succession will depend on the character of the particular property, but the converse is not true for the character of poperty can stand independently of the law of succession. The character of the property can have a general and wider application as this very Ordinance shows, and I am satisfied that section 23 precedes any application of a law of succession and does not constitute an integral part of the law of succession. In fact, this provision has the effect of obviating any search for a law of succession which should apply to such property. If this construction is correct, as it appears to me to be, then section 170 can have no application to this case, and I must perforce give effect to the provisions of section 23 leaving aside the provisions of section 170 of the Land Development Ordinance.

Mr. Wimalachandra's final submission is that it is a requirement for an offering of immovable property to be considered as *sanghika*, that it should be property over which the offeror has full title, and that the gift must also be made in perpetuity. Since an allotment under the Land Development Ordinance is not capable of giving that plenitude, he

submits that such property cannot constitute *sanghika* property. For this proposition he relied on concepts embodied in the Dhamma Vinaya, but could cite no legal authority. Mr. Gooneratne disputed this and said that, on the contrary, a devout Buddhist is never prevented from making a pious offering and gifting almost any right, interest, or property (a few things however are excluded) is considered a meritorious act, and the requirement for full ownership or perpetuity as suggested are superimpositions not justified by the doctrine.

I am relieved however to find that this matter could be resolved without reference to abstruse matters of doctrine. An examination of section 23, Buddhist Temporalities Ordinance, shows that it merely states that the *pudgalika* property acquired by a *bhikkhu* for his own use, if not alienated during his life-time "shall . . . . . , be deemed to be the property of the temple". It is not for us to decide whether or not such property is in fact *sanghika*, i e , using the term in the religious concept.

As far as the law is concerned, it would appear that property belonging to a temple is not limited to *sanghika* property properly so called Temple property is all land "belonging or in any wise appertaining to or appropriated to the use of any temple" – section 20. In this regard Mr. Wimalachandra's submission that this is not strictly *sanghika* property may well be right from a doctrinal point of view.

The sea-change the property undergoes under section 23 is due solely to the operation of law and it is apparent that none of the rites, rituals, and ceremonies which are considered essential by the religious texts or practices for such a change of character of property have been made a requirement here. In the result, one is compelled to regard this section as a kind of pure statutory definition of a constitutive nature, meaning just what it states and no more, namely, that such property "shall be deemed to be the property of the temple". The use of the word 'deemed' further emphasises the fact that it is a legal device or fiction. Whether or not it is appropriate to use the word '*sanghika*' in its religious connotation in this context is another matter, but this provision declares that as far as the law and the secular authorities are concerned, they would regard and deal with property falling within section 23 as the property of the temple, irrespective of what it may constitute from the religious and doctrinal point of view.

In the result, the appeal must be allowed. I accordingly set aside the judgment of the Court of Appeal and restore the judgment of the trial court. The plaintiff-appellant would also be entitled to costs both here and in the Court of Appeal.

ABDUL CADER, J.– I agree.

RANASINGHE, J.

have had the advantage of perusing the judgment of Wanasundera, J. I, however, find myself unable to agree with the construction placed upon the provisions of sec. 23, Buddhist Temporalities Ordinance by Wanasundera, J. in the said judgment.

I am inclined to the view that the said section 23 is a provision of written law as is contemplated by the provisions of sub-sec (1) of sec. 170 Land Development Ordinance (chapter 464). The consequence of property, which falls within the scope of the said sec. 23, being deemed to vest in the temple would no doubt be to change the original *pudgalika* character of the said property and impress it thereafter with the character of *sanghika* property. It is a consequence which is brought about by operation of law. It so follows from a provision of law which states what is to happen to the property which belonged to a person who has passed away without having expressely declared to whom it should go upon his death. Such a result would not detract from the primary concern of the said provision which is to provide for the passing of property upon the death of the person who was entitled to and could have given directions in regard to how it should devolve upon his death, but who has however, not given any such directions to take effect upon his death. The conversion of the character of the property from that which it bore prior to the death of the owner to another after the death of the owner is not something which the provisions of the section themselves do. It is but the consequence of what they ordain. The said section 23 is, in my opinion, a provision of law which makes provision for and regulates the passing of property upon the death of one who could have given directions in regard to its devolution upon his death but had nevertheless failed to do so.

I am not, therefore, disposed to interfere with the judgment of the Court of Appeal. The appeal of the plaintiff-appellant must, accordingly, be dismissed with costs.

Appeal allowed.