

MOHAMED
v.
LAND REFORM COMMISSION AND ANOTHER

COURT OF APPEAL.
JAYASURIYA, J.
C.A. 210/90
JULY 31, 1996.

Land Reform Commission - Possession handed over - Ejectment - Roman Dutch Law - Monthly leases - locatio conductio - Tacit Relocation (Tacit Renewal) - State lands Recovery of Possession Act No. 7 of 1979, S.5-Ultra Vires - Wednesbury's Rule.

The Petitioner is in possession of the land in question, after having entered into a lawful transaction with one N.R.R. the previous owner and the father of R.R. At the request of the LRC, the Petitioner formally handed over pos-

session of the land to the LRC, and LRC on that day itself handed back possession to the Petitioner on the basis of a lease. That lease transaction has been acquiesced in and adopted by the LRC, as it has accepted and received rents from the Petitioner. On 23.9.87 the Legal Director LRC (P22) has written to the Petitioner stating that the Petitioner had agreed to accept the return of a sum of Rs. 100,000/- which had earlier been paid by the Petitioner to the said N.R.R. who is the father of R.R. and that on payment of the said sum he had agreed to handover possession of the said land to the LRC. As the Petitioner did not vacate the said land, steps were taken under the provisions of the State Lands (Recovery of possession) Act to recover possession of the land.

Held :

(1) The document (P22) is not operative and effective in law to terminate the monthly contract of lease existing between the Petitioner and the LRC.

(2) In Roman Dutch law, there is nothing called a "Temporary lease". There could be monthly lease or leases for a greater period of time over agricultural lands. The lease, which is a contract would generally create Rights in personam and would only have the effect of creating rights in Rem and an interest in land if the lease is executed for a period over one month even an oral contract of locatio - conductio, if proved would be sufficient to constitute a monthly lease in respect of agricultural land. Thereafter on the application of the doctrine of Tacit Relocation (Tacit - Renewal), the contract of monthly lease over agricultural land would be extended from month to month until it is terminated by a legal and proper notice.

(3) The LRC has issued receipts and accepted payment of lease rent in respect of this land. In these circumstances the affidavit filed by the Chairman, LRC is false and fraudulent.

Per Jayasuriya, J.

"A Court of law is the only bastion and forum to which a humble and innocent litigant could resort to obtain redress against tyrannical officialdom of this nature which is actuated by improper motives generated by persons having at their disposal political influence".

(4) The Petitioner was in lawful and authorised occupation and possession of the said land as a monthly lessee of the said land under the LRC and in the circumstances the Notice (X) issued by the 2nd Respondent is Ultra Vires, the powers of the said 2nd Respondent vested in him by the provisions of Act No. 7 of 1979; further this Notice (X) has also been issued without jurisdiction, mala fide- for an indirect and collateral purpose.

The said Notice issued by the 2nd Respondent in terms of S.3 of Act No. 7 of 1979 as amended, is grossly unreasonable and therefore liable to be set aside.

AN APPLICATION for writ of Certiorari/Mandamus,

Cases referred to:

1. *Carron v. Fernando* 35 NLR 352
2. *Ukku Amma v. Jeina* 51 NLR 254

Faiz Musthapa P.C. with Sanjeeva Jayawardene for Petitioner.
P.G. Dep. D.S.G. for 1 and 2 Respondents.

Cur.adv.vult.

July 31, 1996.

F.N.D. JAYASURIYA, J.

In regard to the position of the Petitioner's occupation of the land which is the subject matter of this application, the issue at discussions and the issue reflected in the entirety of the correspondence which has been produced, was whether the Petitioner had a permanent lease over the said land, or whether he was given a temporary lease. The Land Reform Commission has demanded rents from the Petitioner and the Petitioner has paid a sum of Rs. 26,961/- as lease rent for the said land. The documents annexed and produced clearly disclose that the payment has been received as lease rent. The documents produced before this Court establish that the Petitioner is in possession of this land, after having entered into a lawful transaction with Mr. Nalin Rajendra Ratnayake, the previous owner of the said land and the father of Ravindra Ratnayake. At the request of the Land Reform Commission, Petitioner formally handed over the possession of the said land to the Land Reform Commission and on that day itself, the Director of the Land Reform Commission handed back possession of the said land to the Petitioner on the basis of a lease. That lease transaction has been clearly acquiesced in and adopted by the Land Reform Commission which has accepted and received rents from the Petitioner by way of lease rent as is evidenced by the produced documents. After such payment and receipt of a sum of Rs. 26,961/- the Land Reform Commission had thereafter failed to take

any meaningful steps in regard to the occupation of the Petitioner till the despatch of the letter dated 23rd of September, 1987 which has been marked as P22. In P22, the Legal Director of the Land Reform Commission has written to the Petitioner stating that the Petitioner had agreed to accept the return of a sum of Rs.100,000/- which had earlier been paid by the Petitioner to the said Nalin Ratnayake who is the father of Ravindra Ratnayake and that on payment of the said sum that he had agreed to hand over the possession of the said land to the Land Reform Commission. This assertion contained in P22 is vehemently denied and controverted by the Petitioner who has filed a counter-affidavit. P22 further sets out that if the Petitioner is not agreeable to accept the said sum of Rs.100,000/- and leave the estate voluntarily that legal steps will be taken by the Land Reform Commission to eject the Petitioner from this land. This document marked P22 is not operative and effective in law to terminate the monthly contract of lease existing between the Petitioner and the Land Reform Commission.

In Roman Dutch Law which applies to this issue, there is nothing called a "temporary lease" which is known to that law. There could be monthly leases or leases for a greater period of time over agricultural lands. It was held in *Carron v. Fernando* ⁽¹⁾ that a monthly lease of land is not required to be notarially executed as it does not create an interest in land. The ratio decidendi of that case is that the lease, which is a contract and would generally therefore create rights in personam, would only have the effect of creating rights in Rem and an interest in land if the lease is executed for a period over one month. Vide also the judgement of *Justice Wijewardena in Ukku Amma v. Jeina.* ⁽²⁾ Thus, I reject, as unsustainable and ill-founded the argument of learned Deputy Solicitor - General that there ought to have been a formal and a notarially executed lease in respect of a monthly lease of agricultural land. Even an oral contract of *locatio-conductio*, if proved, would be sufficient to constitute a monthly lease in respect of Agricultural land. Thereafter on the application of the doctrine of TACIT RELOCATION - (TACIT RENEWAL) the contract of monthly lease over agricultural land would be extended from month to month until it is lawfully terminated by a legal and proper notice.

The Land Reform Commission has issued receipts and accepted payment of lease rent in respect of this particular land from the

Petitioner. The objections filed on behalf of the Land Reform Commission by Atukoralage Amarawansa Wijethunga expressly admits the averments in the Petition that there was a lease in respect of the said land between the Petitioner and the Land Reform Commission and that the Land Reform Commission had accepted rents from the Petitioner. In these circumstances, the issue arises whether the Chairman or any other officer of the Land Reform Commission could truthfully, conscientiously, with a due sense of responsibility and legality file an application and an affidavit in the Magistrate's Court of Bandarawela in Case Number 56976 to the following effect." මාගේ අදහසේ හැටියට එකී පී. කේ. මොහොමඩ් නමැති අය අනවසරයෙන් එකී ඉඩමෙහි සන්තකය දරන, පදිංචිව සිටින අතර....."

Mr. Ranjan Wijeratne who was the Chairman of the Land Reform Commission had filed such an affidavit which has been proved to be false and fraudulent. This Court holds that the aforesaid fraud would vitiate all the acts and steps done and taken by Mr. Ranjan Wijeratne in terms of section 5 of State Lands (Recovery of Possession) Act No. 7 of 1979 as amended. This Court is of the considered view that the aforesaid fraud would vitiate the petition and affidavit marked as X3 filed by Mr. Wijeratne and all subsequent acts done in pursuance of the said fraudulent petition and affidavit. A Court of law is the only bastion and forum to which a humble and innocent litigant could resort to obtain redress against tyrannical officialdom of this nature which is actuated by improper motives generated by persons having at their disposal political influence.

It is crystal clear that the mother of Ravindra Ratnayake did not make any claim to this land on behalf of her son. The documents which have been marked and produced, establishes that the copies of the letters emanating from the Land Reform Commission have been sent to Percy Perera who happens to be the father-in-law of Ravindra Ratnayake and who had belatedly set his eyes on getting the said land for his son-in-law. Due to the representations made by him to persons holding high political office, the Land Reform officials have changed their proposed course of action and are seeking to raise issues with regard to the legality of the monthly lease which the Land Reform Commission had executed in favour of the petitioner and in respect of which lease the Land Reform Commission had collected rents from the Petitioner. In view of the false and fraudulent aver-

ments contained in the said petition and affidavit marked X3, I set aside the petition, affidavit and report filed before the Magistrate in Magistrate's Court case No. 56976, and the statement of objections and the affidavit filed before this Court. I restrain the learned Magistrate from taking any further actions or steps upon the report, petition and the affidavit which have been filed in Case No: M.C. Bandarawela 56976. I uphold the legal submissions of the Petitioner which are set out in the petitioner's petition. I hold that the Petitioner was in lawful and authorised occupation and possession of the said land as a monthly lessee of the said land under the Land Reform Commission and in the circumstances the notice (marked 'X') issued by the second respondent is **ultra vires the powers of the second respondent**, vested in him by the aforesaid provision of said Act No. 7 of 1979 as amended. I also hold that the Petitioner was in lawful and authorised occupation and possession of the said land, and the aforesaid notice (marked 'X') issued by the second respondent had been **issued without Jurisdiction**. I further hold that the said notice (marked 'X') had been issued Mala Fide, for an indirect and collateral purpose at the instance of the said Percy Perera, who is the father-in-law of Ravindra Ratnayake. In conclusion, I hold following the Rule in *Wednesbury's Case* that the said notice and order issued by the second respondent in terms of the provisions of section 3 of the State Lands (Recovery of Possession) Act. No: 7 of 1979, as amended, is grossly unreasonable and therefore liable to be set aside by the Court, in the exercise of its supervisory Jurisdiction over administrative orders.

I allow the application of the Petitioner with costs in a sum of Rs. 1,050/- payable by the 1st Respondent to the Petitioner and grant relief to the Petitioner only as prayed for in prayer A,C,D of the petition. I proceed to quash the aforesaid quit notice marked X1 and the petition, affidavit and report filed by Ranjan Wijeratne in Magistrate's Court Bandarawela Case Number 56976 which has been marked as X3. I stay all further proceedings by the Magistrate in Magistrate's court Case Number 56976.

Quit Notice, petition, affidavit and report filed in M.C. Bandarawela Case No. 56976 quashed.

Application allowed.