

NANDASENA

v.

SENANAYAKE AND ANOTHER

SUPREME COURT

ISMAIL, J., WEERARATNE, J. AND SHARVANANDA, J.

S.C. APPEAL NO. 36/80

CA/LA NO. 103/79 (SC)

S.C. APPLICATION NO. 885/78

C.A. Appeal Nos. 261 – 262/77

M.C. Kurunegala No. 20748

June 16 and 18, 1981.

Agricultural Lands Law No. 42 of 1973 (S. 53(4)) – Paddy Lands Act – Eviction – Interpretation – Appeal and application in Revision – The use of the word “may” in legislation – Sections 4 1A(d), 21 of Paddy Lands Act – Sections 53 (4)(c) and 4 of Agricultural Lands Law.

The use of the word ‘may’ in S. 21 of the Paddy Lands Act postulates an imperative. In interpreting statutes a purposive approach should be adopted where otherwise futility will result.

The object of the legislature in enacting sections 53(4) (b) and (c) providing for proceedings pending under the Paddy Lands Act at the time of its repeal was to ensure that they could be proceeded with to consummation by the eviction of the landlord. The legislature intended that inquiries which had commenced but had not been concluded before the Commissioner or the Board of Review should be heard and concluded under S. 4(1A)(d) of the repealed Act and that the provisions of the law should *mutatis mutandis* apply to eviction by process of court in all cases of unexecuted or unsatisfied determinations made under section 4(1A)(d) of the Act whether prior to its repeal or subsequent thereto, except those in respect of which action under section 21 of the Act was already pending in the Magistrate’s Court.

The vacation order by the Commissioner is a mandatory ministerial act complementary to the decision under S. 4(1A)(d) of the Act. Section 53(4)(c) which make section 4 of the Law applicable *mutatis mutandis* relates to the stage when action for eviction is to be commenced in the Magistrate’s Court. All steps preliminary to the commencement of such action, such as a vacation order under Section 4(1A)(d)(iii) of the Act, will therefore have to be taken under the Act. Hence eviction proceedings under S. 4 of the Law for the eviction of the landlord and his nominees who do not comply with the vacation order issued by the Commissioner in terms of S. 4(1A)(d)(iii) of the Act are warranted.

Cases referred to:

- (1) *Rosalin Nona v. Assistant Commissioner of Agrarian Services, Vavuniya* 75 NLR 443.
- (2) *R v. Bishop of Oxford* (1880) 5 AC 214, 244.
- (3) *Whitney v. Inland Revenue Commissioner* [1925] AC 27, 52.
- (4) *Nokes v. Doncaster Amalgamated Collieries Ltd.*, [1940] AC 1014, 1023.
- (5) *Luke v. Inland Revenue Commissioner* [1963] 1 All ER 655, 664
- (6) *Magor and St. Mellons Rural District Council v. New Portborough Council* [1962] A.C. 189

(7) Nardias Silva v. Somapala S.C. appeal 27/79 – S.C. Minutes of 3.7.1981.

Appeal from judgment of the Court of Appeal.

Nimal Senanayake with Kithsiri P. Gunaratne, Miss S. M. Senaratne and Saliya Mathew for Petitioner-appellant

Douglas Premaratne SCC with N. Y. Casie Chetty S. C. for 1st respondent A. S. I. Tillakawardene with S. C. Javanath for 2nd respondent

August 14, 1981

SHARVANANDA, J.

This appeal involves the question of the impact of the Agricultural Lands Law, No. 42 of 1973, on proceedings pending under the Paddy Lands Act that was repealed by that Law.

The 2nd respondent on 1.8.71 complained under Section 4(1A) of the Paddy Lands Act, No. 1 of 1958 as amended, to the Commissioner of Agrarian Services that he, a tenant-cultivator, had been evicted from the paddy land called "Madalanda", in extent 3½ acres, by the petitioner-appellant and the 3rd respondent. The Assistant Commissioner held an inquiry in terms of Section 4(1A) of the Paddy Lands Act as amended, and by his order dated 19.12.72, held that the 2nd respondent had been so evicted.

Aggrieved by that decision of the Assistant Commissioner, the petitioner-appellant and the 3rd respondent appealed to the Board of Review against that order. The Board of Review heard the appeal on 10.8.73. The decision of the Board of Review confirming the decision of the Assistant Commissioner and dismissing the appeal was communicated to the appellants by letter dated 6.11.73.

The Paddy Lands Act, No. 1 of 1958, as amended (hereinafter referred to as 'the Act') was repealed by section 53(1) of the Agricultural Lands Law, No. 42 of 1973 (hereinafter referred to as 'the Law'). The Law came into operation on 17th October 1973. Section 53(4) of the Law however provided that:

"Notwithstanding the repeal of the Paddy Lands Act, No. 1 of 1958:

- (b) all proceedings which are pending and in respect of which inquiries have commenced before the date of commencement of this Law, before the Commissioner of Agrarian Services or the Board of Review shall be heard and concluded before such Commissioner or Board of Review in all respects as though that Act had not been repealed.

- (c) all proceedings which have been commenced and completed before the Commissioner of Agrarian Services and the Board of Review in respect of which action has not been commenced in the Magistrate's Court under Section 21 of the Paddy Lands Act shall be proceeded with under the provision of this Law.
- (d) all proceedings which are pending in respect of which inquiries have not commenced on the date of commencement of this Law before the Commissioner of Agrarian Services or the Board of Review shall be heard and concluded under the provisions of this Law.

By writing dated 4.3.74 the Assistant Commissioner purporting to act under section 4(1A)(d)(ii) of the repealed Act, ordered the appellant and the 3rd respondent to vacate the said paddy land and hand over its possession to the 2nd respondent (the complainant) on or before 19.3.74. On the failure of the petitioner-appellant and the 3rd respondent to comply with the vacation order, the Authorised Officer of the Agricultural Tribunal, Kurunegala District, by application dated 26th March 1976, instituted proceedings in the Magistrate's Court of Kurunegala for their eviction. The application was made under section 53(4)(c) read with section 4(1) of the Law. The application stated that "the Assistant Commissioner, Agrarian Services, Kurunegala District, under section 4(1A)(c)(ii) of the Paddy Lands(Special Provisions) Act, No. 2 of 1970, read with the Paddy Lands Act, No. 1 of 1958, as amended by Act No. 30 of 1958, No. 61 of 1961, No. 11 of 1964 and No. 25 of 1968 issued an eviction order to leave the field called 'Madalandakumbura'. The respondents (viz. the appellant and the 3rd respondents) have defaulted the said order and failed to leave and hand over possession". It prayed that the Court be pleased to issue order on the said respondents under section 4(2) of the Agricultural Lands Law to evict the said respondents and all others who were occupying the said paddy land and to hand over possession of the said paddy land to the 2nd respondent.

In terms of the said application/report, the Magistrate issued an eviction order on 31.3.76. This order was carried out by the Fiscal on 27.4.76 by the eviction of the appellant and of the 3rd respondent from the field and the placing of the 2nd respondent in possession thereof. The appellant and the 3rd respondent thereupon filed appeal on 3. 5. 76 to the Supreme Court from the order of the Magistrate. The petitioner-appellant also filed on 1. 8. 76 an application for revision.

The appeals and the revision application have been dismissed by the Court of Appeal. The petitioner-appellant has preferred this appeal from the judgment of the Court of Appeal dated 23rd November 1979. The ground of appeal is that the orders made under the Paddy Lands Act cannot be enforced under the Agricultural Lands Law, No. 42 of 1973. It is contended for the appellant that the Authorised Officer, Agricultural Tribunal, had no power to take steps to enforce orders made by the Commissioner of Agrarian Services under the Act and that the Assistant Commissioner of Agrarian Services had, after the repeal of the Act, no authority to issue the vacation order dated 4th March 1974.

It was urged by Counsel for the appellant that no step could be taken under the Act after the date of repeal of the Act, viz. 17.10.73, except as specifically provided for by section 53(4) (b), (c) and (d) of the law. It was further contended that the procedure set out in section 4 of the Law applied only to orders made under section 3(8)(11) of the Law by the Agricultural Lands Tribunal and that it could not be invoked to enforce vacation orders made by the Commissioner of Agrarian Services under the Act. He submitted that there was a lacuna in the Law and that this Court cannot fill the gap.

On Counsel's construction of the provisions of section 53(4)(b) and (c) of the Law, they are ineffectual and futile. According to him, after the repeal of the Act, vacation orders under that Act could not be validly issued and recourse could neither be had to the machinery of section 21 of the Act nor to that of section 4 of the Law for the eviction of the person in wrongful occupation. He pointed to the opening words of section 4(1A)(d)(1) of the Law, "Where any person who has been ordered under this Law by the Tribunal to vacate any extent of paddy fails to comply with such order, the Tribunal or any person authorised in that behalf may present to the Magistrate a written report.", and submitted that it is a condition precedent for the invocation of the procedure under section 4 of the Law that the order sought to be enforced should be an order by the Agricultural Lands Tribunal. His submission is founded on the literal approach to the construction of the relevant provisions of the Law.

The scheme of the Act provides for the following steps for the restoration of a tenant-cultivator who has been wrongfully evicted from the field:

On the complaint of such tenant-cultivator that he has been evicted from any extent of paddy land, the Commissioner holds

an inquiry at which the landlord is given an opportunity of being heard. The Commissioner's decision is communicated to the parties but it is open to the landlord who is aggrieved by such decision to prefer an appeal from such decision to the Board of Review (section 4(1A) (a) (b)).

When the Commissioner decides that the eviction has been made and no appeal is made from such decision, or the Board of Review on any such appeal confirms the decision of the Commissioner, the person evicted becomes entitled to have the use and occupation of the paddy land restored to him (Section 4(1A) (d) (1)).

The decision of the Commissioner or the decision of the Board of Review on appeal, as the case may be, is final and conclusive and cannot be called in question in any Court (Section 4 (1A) (c) as amended by Act No. 25 of 1966 and section 59(3) of the Act). Following on that decision, the Commissioner is enjoined to order in writing that every person in occupation of the land should vacate it on or before a date specified in the order. Such ordering is mandatory. If that person fails to comply with the vacation order, section 4(1A) (d) (ii) requires that "he shall be evicted from such extent in accordance with the provisions of section 21". Section 21 of the Act provides that if any person who has been ordered by the Commissioner to vacate any extent of any paddy land and deliver possession thereof to any specified person fails to comply with such order, the Commissioner may present in the Magistrate's Court a written report of such default, and on such written report the Magistrate shall issue an order directing the eviction of the persons specified in such report: an appeal lies to the Supreme Court from the order of the Magistrate. Thus, the machinery for the enforcement of the statutory right of the tenant-cultivator to be restored to the use and occupation of his paddy land by the eviction of the landlord and his nominee by Court process is set in motion. The obligation to initiate this process under section 21 for the restoration of the tenant-cultivator to the use and occupation of his land arises only if the landlord does not comply with the vacation order issued by the Commissioner in pursuance of the decision under section 4(1A) (d). In view of the conclusive nature of the decision of the Commissioner or of the Board of Review, the validity of same cannot be canvassed before the Magistrate or the Supreme Court, except in regard to the particulars furnished by the Commissioner. *Rosalin Nona v. Assistant Commissioner of Agrarian Services, Vavuniya.*⁽¹⁾ As was held in that case, the purpose of section 21 was to make available to the Commissioner the services of the Fiscal to enforce his order.

It was contended by Counsel for the appellant that it is left to the discretion of the Commissioner to take or not to take steps in the Magistrate's Court under section 21 of the Act against a person who fails to comply with the vacation order issued by him. He based his argument on the clause, "The Commissioner may present to the Magistrate's Court. a written report". When this clause is read in isolation, it may appear that the Commissioner has a discretion: but this clause in section 21 has to be read with section 4(1A) (d), which vests the tenant-cultivator with entitlement to have the use and occupation of the paddy field and enjoins that the person who defaults in complying with the vacation order issued by the Commissioner "shall be evicted from such extent of paddy land in accordance with the provisions of section 21." Although the word 'may' generally imports a discretion, it is, in some circumstances, construed as not discretionary but imperative. The word 'may' nearly always gives a power, but the further question whether, given the power, there is a duty to exercise it must depend on the words creating the power. If the donee has nobody's interest to consult but his own, the power is permissive merely, but if a duty to others is at the same time created, the exercise of the power will be imperative. "If the object for which power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right when required on their behalf. The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right: and if the object of the power is to enable the donee to effectuate a legal right, then it is the duty of the donee of the power to exercise the power when those who have the right call upon him to do so". -per Lord Blackburn in *R. v. Bishop of Oxford*.⁽²⁾ In the context, "the Commissioner may present to the Magistrate's Court a written report" in section 21 means "the Commissioner shall present to the Magistrate's Court a written report." Section 21 casts on the Commissioner a positive and absolute duty to take Court action to have a defaulting landlord against whom a decision had been made under section 4(1A) (d) and who does not comply with the vacation order issued by the Commissioner evicted. (Sections 3(8) and 4(1) of the law are also of the same tenor.)

When the Agricultural Lands Law was enacted on 17. 10. 71 to replace the Paddy Lands Act, 4 categories of proceedings under the Act were pending, in the sense that rent-cultivators who had complained of eviction by the landlord had not been restored to possession in terms of the provisions of the Act. They were:

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- (a) Proceedings in respect of which inquiry under section 4(1A) had not commenced on 17. 10. 73
- (b) Proceedings in respect of which inquiry had commenced prior to 17. 10. 73 but in respect of which no final order has been made by the Commissioner of Agrarian Services or the Board of Review;
- (c) Proceedings in respect of which a final decision has been made by the Commissioner or the Board of Review but in respect of which vacation order has or has not been issued, and proceedings have not commenced under section 21 of the Paddy Lands Act; and
- (d) Proceedings in respect of which action has been commenced in the Magistrate's Court under section 21 of the Paddy Lands Act.

Since the Paddy Lands Act was being repealed by the Agricultural Lands Law, provision for the aforesaid categories of cases which were pending at the time of the repeal had to be made. Section 53(4) (a), (b) and (c) of the Law was designed to meet the exigencies of the first 3 categories of cases. The purpose of this section is manifest.

Section 6(3) (c) of the Interpretation Ordinance applies to the last class of proceedings pending in Court at the time of the repeal. It enables those proceedings to be carried on under section 21 of the Act as if the Act had not been repealed. It cannot be applied or be invoked in the case of the other aforesaid categories (a), (b), and (c), as proceedings referred to therein were not pending in Court. The words "action, proceeding or thing pending" in section 6(3) (c) of the Interpretation Ordinance connote, in my view, action, or proceeding, or thing of a judicial nature pending in a Court of Law when the repealing law came into operation.

Section 53(4) (d) of the Law provides that complaints in respect of which inquiries under section 4(1A) of the Act have not commenced should be heard and concluded under the provisions of the new Law.

Section 53(4) (b) of the Law seeks to provide for proceedings in respect of which inquiries had commenced under the Act before the Commissioner of Agrarian Services or the Board of Review, but not completed. It states that the Commissioner or the Board of Review, as the case may be, shall hear and determine them under

Section 4(1) (a). It does not expressly state how such a decision of the Commissioner or the Board of Review is to be executed.

Section 53(4C) seeks to provide for those cases where a final order had been made by the Commissioner or the Board of Review but in respect of which action under section 21 had not been commenced. It states that such proceedings shall be proceeded with under the provisions of the Law.

Counsel contended that the legislature has not provided for the execution of the decision of the Commissioner or the Board of Review in cases falling under Section 53(4) (b) of the Law. He stated that though section 53(4) (c) was designed to provide for the enforcement of decisions of the Commissioner or of the Board of Review dated prior to the repeal of the Act, viz. 17.10.73, but in respect of which action had not been commenced in the Magistrate's Court under section 21, the object has failed as the provisions of the Law cannot be applied for the enforcement of orders stemming from them. The burden of his argument was that orders referred to in section 53(4) (b) and (c) can for their enforcement neither attract the procedure set out in section 21 of the Act as the Act has been repealed, nor the procedure set out in section 4 of the Law, as section 4 of the Law, applied only to orders made under section 3(8)(b) of the Law. This construction has the consequence of rendering purposeless the exercise authorised by section 53(4) (b) and of rendering nugatory the provisions of section 53(4) (b) and (c) of the Law.

Statutes should be construed, as far as possible, to avoid absurdity or futility. A statute should be construed in a manner to give it validity rather than invalidity — *ut res magis valeat quam pereat*. As Lord Dunedin stated in *Whitney v. Inland Revenue Commissioner*.⁽³⁾ "A statute is designed to be workable, and the interpretation thereof should be to secure that object, unless crucial omission or clear direction makes that end unattainable." A similar view was expressed by Lord Simon L. C. in *Noles v. Doncaster Amalgamated Colliers Ltd.*⁽⁴⁾ in the words: "If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result". Lord Reid enunciated the same view in *Luke v. Inland Revenue Commissioner*.⁽⁵⁾

“How then are we to resolve this difficulty? To apply the word literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, we must do some violence to the words. This is not a new problem. The general principle is well settled. It is only where the words are absolutely incapable of construction which will accord with the apparent intention of the provision and avoid a wholly unreasonable result that the words of the enactment must prevail.” it is thus legitimate and proper to read and rely upon such a principle as this: “Where the language of a statute in its ordinary meaning and grammatical construction leads to manifest contradiction of the apparent purpose of the enactment, or to cause inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence”. (Maxwell ‘Interpretation of Statutes’, 10th Ed. at p. 229) A purposive approach to the construction of the relevant section of the Law avoids the futility apprehended by Counsel and enables the statutory objective to be achieved.

In adopting the purposive construction, one has to bear in mind the warning contained in *Magor and St. Mellons Rural District Council v. New Portborough Council* ⁽⁶⁾ that the duty of the Court is limited to interpreting the words used by the legislature and that it has no power to fill in any gaps disclosed.

The object of the legislature in enacting sections 53(4) (b) and (c) providing for proceedings pending under the Act at the time of its repeal is clear. The legislature did not count those proceedings to become abortive with the repeal, but wanted them to be proceeded with to consummation by the eviction of the landlord. It intended that inquiries which had commenced but not been concluded before the Commissioner or the Board of Review should be heard and concluded under section 4(1A) (d) of the repealed Act and that the provisions of the Law should *mutatis mutandis* apply to the eviction by process of Court in all cases of unexecuted or unsatisfied determinations made under section 4(1A) (d), whether prior to the repeal or subsequent thereto except those in respect of which action under section 21 of the Act was already pending in the Magistrate’s Court.

The literal construction of sections 53(4) (c) of the Law urged by Counsel for the appellant fails to achieve the manifest purpose of the legislature and reduces the legislation to futility. On this construction, eviction proceedings founded on decisions of the Commissioner or the Board of Review under section 4(1A)(d)

of the Act, barring those in respect of which action in the Magistrate's Court had already been commenced under section 21 of the Act, can be taken neither under the Act nor under the Law and those decisions will be rendered nugatory. A Court of Justice will, in the circumstances, be justified in adopting a purposive construction by even reading into the section words which are not expressly included in it.

A purposive construction of section 54(4)(c) of the Law militates against the submissions of Counsel for the appellant. In my view this construction of the section enables proceedings in respect of decisions of the Commissioner or of the Board of Review under section 4(1A) (ii) of the Act, where proceedings in the Magistrate's Court under section 21 of the Act had not been commenced prior to the repeal of the Act, to be taken in the Magistrate's Court in terms of section 4 of the Law.

In giving effect to the decision of the Commissioner or of the Board of Review, coercive action through process of Court becomes necessary only if the vacation order issued under section 4(1A) (d) (ii) of the Act by the Commissioner is not complied with. As stated earlier, vacation order is a mandatory ministerial act complementary to the decision under section 4(1A) (d) of the Act. Section 53(4)(c) which makes section 4 of the Law applicable *mutatis mutandis* relates to the stage when action for eviction is to be commenced in the Magistrate's Court. All steps preliminary to the commencement of such action, such as a vacation order under section 4(1A) (d) (ii) of the Act, will therefore have to be taken under the Act. Hence, eviction proceedings under section 4 of the Law for the eviction of the landlord and his nominees who do not comply with the vacation order issued by the Commissioner in terms of section 4(1A) (d) (ii) of the Act are warranted. On this view of the matter the procedure adopted for the eviction of the appellant in the instant case is regular and legal. The officer authorised by the Agricultural tribunal was entitled to initiate proceedings under section 4 of the Law for the eviction of the appellant and the 3rd respondent who had failed to comply with the vacation order issued by the Commissioner on 6.11.73.

Counsel for the appellant relied on the following judgments of the Court of Appeal in support of his submissions:

- (1) C. A. No. 738/76 – M. C. Deniyaya 6645 (C. A. minutes of 6.6.80);
- (2) C. A. No. 246/78 – M. C. Gampaha 44030 (C. A. minutes of 1.8.80);

(3) C. A. No. 43 6/77 — M. C. Matara 29227 (C. A. minutes of 28.11.79);

(4) C. A. No. 280/76 — Revision in M. C. Matara 24767 (C. A. minutes of 30. 9. 80).

The narrow view of section 53 (4)(c) of the Law taken in the above judgments cannot be endorsed.

The conclusion that in the circumstances disclosed in this appeal, vacation order under section 3(8) of the Law should have been obtained from the Agricultural Tribunal as contended for by Counsel for the Appellant, is not warranted on a proper construction of section 53(4) (b) and (c) of the Law.

I note that the following judgments of the last Supreme Court which run counter to the submissions of appellant's Counsel on the effect and scope of section 53(4)(b) and (c) of the Law have not been considered by the Court of Appeal — probably for their reasons that the Court did not have the benefit of their citation:

(1) S. C. Application 473/76 — M. C. Deniyaya 6644 (S. C. minutes of 13.7.76);

(2) S. C. Application 179/76 — M. C. Badulla 50567 & 56291 (S. C. minutes of 28.6.78);

(3) S. C. Application 727/75 — M. C. Panadura 68874/A (S. C. minutes of 17.1.78 .

(4) S.C. Application 779/76 — M. C. Panadura 73691/A (S. C. minutes of 24.5.77);

Counsel for the appellant referred us to the Judgment of this Court in *Nandias Silva v. Somapala*⁽¹⁾ and submitted that this judgment has advisedly held that the issue of 'vacation order' was part of the function of the Assistant Commissioner even after repeal of the Paddy Lands Act and that it followed that hundreds of 'vacation orders' issued by officers authorised by the Agricultural Tribunal under the Law pursuant to orders under section 4(1A)(d) of the Act, must be illegal. This contention of illegality cannot be accepted. A vacation order issued under section 4(1A)(d)(ii) of the Act is, as stated by me supra, a ministerial act ancillary to the Commissioner's or Board's decision which is the foundation for eviction proceedings. The issuing of a vaca-

tion order is in the nature of a statutory duty cast on the Commissioner. It is not of jurisdictional importance who performs that duty. Hence it is not a material irregularity vitiating a vacation order and proceedings thereon that the vacation order under section 4(1A) (d) (ii) of the Act is, after the repeal of the Act, issued not by the Assistant Commissioner but by an officer authorised by the Agricultural Tribunal.

I dismiss the appeal. The appellant will pay each of the 1st and 2nd respondents Rs. 210/= as costs of this appeal.

ISMAIL, J. I agree.
WEERARATNE, J. I agree.

Appeal dismissed