

1959 *Present* : Basnayake, C.J., de Silva, J., and H. N. G. Fernando, J.

IN RE R. C. O. DE LA MOTTE

In the matter of a Rule issued under section 47 of the Courts Ordinance (Cap. 6) on R. C. O. de la Motte, Licensed Surveyor, in D.C. Kandy No. 5,084

Contempt of Court—Commission issued by District Court to surveyor—Order of Court disobeyed—Power of Supreme Court to punish the surveyor—Courts Ordinance (Cap. 6), ss. 47, 57—Civil Procedure Code, ss. 428, 429—Partition Act, No. 16 of 1951, s. 74.

Any person who does any act which may tend to hinder the course of justice or show disrespect to the Court's authority commits contempt of Court within the meaning of section 47 of the Courts Ordinance.

Where a surveyor accepted a commission from a District Court for the survey of a land which was the subject matter of litigation in that Court and subsequently, in disobedience of the Court's order, returned the said commission unexecuted—

Held, that the Supreme Court had power under section 47 of the Courts Ordinance to punish the surveyor for contempt of Court.

RULE issued under section 47 of the Courts Ordinance.

E. B. Wikramanayake, Q.C., with *T. B. Dissanayake*, for Respondent.

M. Tiruchelvam, Acting Solicitor-General, with *V. Tennakoon*, Senior Crown Counsel, and *L. B. T. Premaratne*, Crown Counsel, as *Amicus Curiae*.

Cur. adv. vult.

October 2, 1959. BASNAYAKE, C.J.—

The respondent, Roland Carl Owen de la Motte, is a person licensed under the Surveyors Ordinance to practise as a land surveyor. In 1950 he applied to the District Judge of Kandy for the inclusion of his name in the list of land surveyors who were willing to execute Commissions issued by the District Court of Kandy for the survey of lands which are the subject matter of litigation in that Court. From that year till 21st April 1958 he continued to receive and execute the Commissions issued by that Court. On that day he wrote the following letter to the District Judge (X.19) :—

“ Kandy, 2.14.58.

The District Judge
Kandy.

Court Commissions

Sir,

I regret that as the Judges have not found it possible to accede to the requests made in the joint letters dated 25th November and 13th December 1957 signed by all the surveyors of Kandy Courts I have to return the undermentioned Commissions that I have in hand unexecuted.

I would be thankful if no further Commissions are issued to me until such time as it is found possible to grant the requests referred to above.

I am, Sir,
Your obedient Servant,

Sgd R. C. O. de la Motte,
Licensed Surveyor.

P 4772, P 4703, P 4514, P 4531, P 4539, P 4867, P 5278, P 3979, P 4978, P 4803, P 2975, P 4860, P 3478, P 3897, P 2727, P 4601, P 4386, P 5309, P 3817, P 4747, P 4362, L 5084, L 4860, L 5038, L 4801, L 4583, L 4986, CR 14251, CR 14373, P 4701."

The Commissions above specified by the respondent are Commissions issued in respect of partition actions as well as other actions relating to land. On receipt of this and other similar communications from other land surveyors to whom Commissions had been issued the District Judge brought the matter to the notice of this Court and upon consideration of his communication this Court issued the following rule nisi on the respondent under the hand of its Registrar :—

"Whereas the District Court of Kandy did on the 20th day of January, 1958, in D.C. Kandy Case No. 5084/L issue a Commission to you and whereas you did return the said Commission to the said District Court unexecuted with a request for an extension of time and whereas the said District Court granted your application and extended and re-issued the said Commission for execution by you returnable the 2nd day of June, 1958 ; and whereas you in disobedience of the Order of the said Court did return the said Commission unexecuted :

"You are hereby ordered to appear in person before the Honourable the Supreme Court at Hulftsdorp, Colombo, on the 5th day of June, 1959, at 11 o'clock in the forenoon and show cause, if any, why you should not be punished for the offence of contempt of Court in that having accepted the said Commission issued to you by the said District Court you did in disobedience of its order return the said Commission unexecuted and thereby act in contempt of the authority of the said District Court of Kandy."

The respondent appeared by counsel and stated that he was showing cause and we therefore fixed a day for his trial.

Shortly the facts are as follows :— The respondent was engaged by the defendant in D.C. Kandy Case No. 5084 for making a survey of the land in dispute in that case. The plaintiff in that action was filed on 28th March 1957. Before filing answer the defendant appears to have made an application for a survey of the land and his application has been allowed on condition that the surveyor's fee of Rs. 75 was deposited. On

17th January 1958 this deposit was made and on 18th January 1958 (the date 18.1.1957 on his letter appears to be a mistake) the respondent wrote the following letter to the District Judge :—

“ *D.C. Kandy Case No. L. 5084*

I have agreed to survey the land called Thiruwaneella Alakola Welehena of one Thimba kurakkan extent at Munwatte, which is the land in dispute in this case for a fee of Rupees Seventy-five only Rs. 75.”

The following Commission was thereupon issued to him on 20th January 1958 :—

“ In the District Court of Kandy

Ganapathipillai Kailainathan of Colombo.....Plaintiff

No. L 5084.

v.

Rajanayake Mudiyanseelage Appuhamy of Kahatadanda,
Padiyapellella. Defendant

To : R. C. O. de la Motte Esquire
Licensed Surveyor
Kandy.

Whereas by an order of this Court made on the 20th day of January 1958 it was ordered that a commission be issued to you to make a survey of the land fully described in the schedule hereto.

You are therefore hereby appointed Commissioner to make the said survey and for that purpose you are hereby authorised at all hours after sunrise and before sunset with all necessary assistance, workmen and implements to enter upon the said premises and carry on and continue the said survey until the same is concluded and ended.

You are further directed to affirm or swear to the correctness of your plan and report before a J.P. or a Commissioner for Oaths.

You are hereby required to complete the said survey and make your return to Court on or before the 19th day of March 1958.

A sum of Rs. 75 as survey fees has been deposited to the credit of this case.”

In a schedule appended to this Commission the land in dispute is described by its metes and bounds. The Commission is signed, by the

Order of Court, by its Secretary. On 17th March 1958, two days before the date on which the respondent had to make his return he wrote the following letter to the District Judge :—

“ *D.C. Kandy Case No. L. 5,084*

Sir,

Due to wet weather, I was unable to execute this survey which I had fixed for 16.3.1958.

Please grant me an extension.”

Although the extension asked for was granted till 2nd June 1958, as stated above, with his letter of 21st April 1958 the respondent returned the Commission unexecuted.

It is contended by counsel that the conduct of the respondent does not constitute contempt of court. He argued that in civil proceedings only those acts of disobedience which are expressly declared by the Civil Procedure Code to be punishable as contempt of court are punishable. He cited section 137 of the Code as an instance. We are unable to uphold his submission. The Civil Procedure Code does make express provision for the punishment as for contempt of certain acts and omissions on the part of those subject to its orders and directions not only in section 137 but also in sections 294, 295, 358, 650, 656, 663, 682, 713, 717, and 718 but the existence of those powers in no way affects the jurisdiction of this Court under section 47 of the Courts Ordinance. That section, which empowers this Court to take cognizance of and to try offences of contempt, reads—

“ The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or judge shall seem meet ; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such Court or Judge, be sentenced to pay a fine not exceeding five thousand rupees.”

Now what are the offences of contempt committed against a District Court or in disrespect of its authority which it has jurisdiction under section 57 to take cognizance of and to punish ? The answer is to be found in that section which reads—

“ Every District Court, Court of Requests, and Magistrate’s Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalties in that behalf by law

provided, every offence of contempt of court committed in the presence of the court itself, and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court.”

It is not contended by the learned Solicitor-General who appeared as *amicus curiae* that the District Court has power to take cognizance of the respondent's offence. The main submission of respondent's counsel is that the act of the respondent does not fall within the ambit of section 47. That section is a provision of wide import. The legislature in its wisdom did not attempt to define the offence of contempt because it would have been unwise to do so. A definition in the statute itself would have had the effect of restricting the scope of the unfettered jurisdiction now vested in this Court in the interests of the efficient administration of justice. The scope of the section is to be found in the words “any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court.” The expression contempt of court is one derived from English law and in that system of law it is contempt for any person to do any act which may tend to hinder the course of justice or show disrespect to the Court's authority (*Sweet's Law Dictionary*). There is no doubt whatsoever that the conduct of the respondent in this case constitutes a very grave contempt of court of a nature heretofore unheard of in our courts. The respondent pleads that he took the course he did because the Judges of Kandy did not accede to the requests of the land surveyors whose names were on the Court's panel to issue Commissions in rotation in the order of their names on the panel instead of allowing each party to a case to nominate his own surveyor. He sought to shelter himself under the representations made by them. For that reason it is necessary to refer to those representations in this judgment. Briefly the history of the negotiations between the surveyors and the District Judge on the subject of the system to be followed in the issue of Commissions to those on the panel of the Court is as follows.

On 17th August 1957 the District Court published the following notice on its notice board (X2) :—

**“ Commissions in Land Actions excluding
Partition Suits**

The choice of a surveyor in the above cases is left to the party or parties, subject however to the approval of the Court.

The Proctor making the application for the issue of a commission should state the fee agreed upon between the client and the surveyor and deposit, except in an instance specially permitted by the Court, the entire amount before the Commission is issued.

Fees payable to the Surveyor should be deposited in Court and never paid direct to the Surveyor.”

On 29th August 1957 it made the following order governing the issue of Commissions in Partition Cases (S.O. 135) (X3) :—

“ As and from the 10th September 1957 Commissions in Partition Cases will be issued to Surveyors chosen by the parties and not in rotation.

“ The Proctor for Plaintiff will file along with the Plaint a motion suggesting the costs that should be deposited in Court for the preliminary survey.

“ In the event of the Court accepting the amount suggested as the estimated costs, the full amount should be deposited in Court with a letter from the Surveyor that he accepts this amount as his fee for the survey.”

On 2nd October 1957 the Surveyors including the respondent sent the following letter to the District Judge :—

“ 2nd October 1957

Standing Order No. 135 dated August 29, 1957

Sir,

We beg to acknowledge receipt of your letter No. SO/135 of 4th September 1957 enclosing a copy of standing order No. 135.

2. With regard to para 1 of the Standing Order, while leaving the matter entirely in the hands of the Court we beg to submit our sense of disappointment that the Court has not found it possible to continue the system of rotation which we urged at the interview granted to us on 1.8.1957.

3. As regard paras 2 and 3 of the Standing Order, which to our mind do not appear to be in agreement with the provisions of section 8(b) the concluding clause of the same section and Sections 9 and 29 of the Partition Act, we beg to submit our difficulty in carrying out the Order for the following reasons:

- (a) It is impossible to determine the full cost of a survey before the survey is actually made as from experience we know that the Schedule to the Plaint in Partition cases does not provide sufficient data to make a correct forecast of the actual cost of work involved to satisfy the provisions (*sic*) requirements of the Partition Act.
- (b) As Commissioners of the Court, we feel that we would be in a better position to discharge our duties to Court if the question of fees was left undiscussed with any one other than the Court.
- (c) The Order if carried out, we fear, would tend to corrupt practice in as much as Commissions are likely to be hawked about by litigants and their touts.
- (d) Most of the Surveyor-Commissioners of Courts through out the Island are members of the Surveyors' Institute of Ceylon and as such this Standing Order was most carefully and respectfully considered by the Council of the Institute.

The Council is of opinion that Court Commissioners who are members of the Institute would contravene the rules of the Institute governing scale of fees, if the requirements of the Standing Order are to be satisfied.

4. We are greatlyfully (*sic*) aware that the issue of the last two paras of the Standing Order has been due to the anxiety of the Court to help the Surveyors, and incidently the litigants to avoid accumulation of large balance of survey fees. We therefore shall very willingly assist the Court in any other manner the Court would wish us to.

5. Under these circumstances we would respectfully request that the Court be pleased to reconsider the Standing Order to enable us to continue as commissioners of the Court.

We are, Sir,
Your obedient Servants,

1. J. T. David
2. B. Samarasinghe
3. V. B. Tennakoon
4. R. M. de Zilva
5. S. M. Talwatte
6. R. G. Herat
7. H. D. G. Rodrigo
8. R. C. O. de la Motte
9. R. T. Samarasinghe
10. L. B. Beddewela
11. E. R. Claasz
12. T. P. Murray
13. L. A. de C. Wijetunga
14. F. Mapalagama.

Licensed Surveyor "

On 7th November 1957 the District Judge through the Secretary of the Court expressed his willingness to meet a deputation of three Surveyors. On 18th November 1957 the deputation met the District Judge and thereafter on 25th November 1957 the Surveyors including the respondent addressed the following communication to the District Judge :—

" Kandy, 25th November 1957

Court Commissions

Sir,

We the undersigned Commissioners of Kandy Courts, have the honour to inform you that the discussion which took place at the interview you kindly granted to our representatives Messrs T. P. Murray, B. Samarasinghe and J. T. David on the 18th instant, and your decision to give effect to Standing Order No. 135 dated 29.8.57 as it stands, for a trial period, was duly communicated to us.

2. Your decision and the reasons for arriving at it were carefully and respectfully considered by us at a meeting convened for the purpose.

3. While we are grateful to know that you had given the matter much thought and consideration, we extremely regret to find ourselves unable to carry out the requirements of the Standing Order.

4. We have been compelled to feel that the Standing Order has been the outcome of a persistent but unjustifiable demand by a section of the Bar to (1) reduce the survey fees and (2) nominate surveyors of their choice, for their own benefit at the expense of the surveyor.

5. Under these circumstances, we would once again urge on you to be pleased to grant us the following requests :—

- (a) The system of Rotation in the issue of commissions to be restored.
- (b) Survey fees to be in accordance with the schedules provided for in Partition Act No. 16 of 1951.
- (c) The minimum initial deposit for an average village holding for preliminary survey be Rs. 100 and subsequent partition survey be in full.
- (d) Recovery of balance survey fees to take precedence over all other proceedings immediately after the return to the commission is filed.
- (e) Requests Nos. (a) to (d) above to be made applicable in land cases as well.

6. Finally, it was decided at the meeting referred to above, that, pending the grant of the above requests, we would be unable to undertake any fresh commissions from the 1st of December 1957.

We are, Sir,
Your obedient Servants,

Sgd J. T. David

B. Samarasinghe

T. P. Murray

R. M. De Zilva

F. Mapalagama

S. M. Talwatta

E. R. Claasz

R. T. Samarasinghe

U. B. Tennekoon

R. C. O. De La Motte

K. G. Herat

L. B. Beddewela

Licensed Surveyors, Court Commissioners.”

The Judges of the Kandy District Court considered the representations made in this communication and conveyed their decision through the Secretary of the Court by the following letter of 11th December 1957 :—

“ J. T. David Esquire
Licensed Surveyor
Kandy.

I am directed by the District Judge to acknowledge receipt of a letter dated the 25th of November 1957 received here on 30th November 1957, to which you and 11 other licensed surveyors and Court Commissioners are signatories.

The reply is being sent to you along with a request by the District Judge that you be good enough to convey the contents of this letter to the other signatories ; if for any reasons you are unable to do so, will you be so good as to communicate with me.

The Judges have considered your letter.

They take exception to paragraph 4 of your letter ; you are aware that the decisions reached by them were after a consideration of the representations made by the Court Commissioners and a deputation of Proctors.

They note with regret your decision not to accept any fresh commission from the 1st of December, 1957, particularly as a deputation of 3 Court Commissioners were apprised by the District Judge of the reasons which influenced the Judges to reach the decision that parties should be permitted to go back to the system of selecting the Commissioners in partition cases ; the District Judge also emphasized to the deputation that this system would be followed until the matter was decided at a conference of judicial officers in the Island which would normally be held in July/August, 1958.

The judges also note your request that in land cases too the system of rotation be introduced ; this is a request which was never made before ; the system of choosing surveyors in land cases has worked very satisfactorily and there is no reason to change it.

The Judges are of the view that the requests contained in your letter under reply cannot be complied with, but in regard to (a) and (b) no final decision will be reached until after the conference of judicial officers.

Sgd SILVA
Secretary

District Court
Kandy, 11th December 1957 ”

To this letter the Surveyors sent the following reply on 7th January 1958 :—

“ Kandy, 7th January 1958

The District Judge
Kandy.

Court Commissions

Sir,

We the undersigned Commissioners of Kandy Courts beg to acknowledge receipt and to note the contents of your letter dated the 11th instant addressed to Mr. J. T. David, Licensed Surveyor.

We are thankful that the Judges of Kandy Courts have given due consideration to our letter of the 25th November 1957 but regret to note that they have not found it possible to grant our requests.

We have once again given anxious consideration to the reasons which have influenced the Judges to (1) revert to the system of nomination of Commissioners parties, (2) adopt the method of fixing survey fees by arrangement with parties before issue of Commissions, for a trial period between now and the next conference of Judicial Officers.

We feel constrained to submit that the trial period will cause hardship resulting in a sense of grievance and frustration under which we would be labouring.

May we therefore suggest that, in order to avoid embarrassment to the Judges by any future course of action we would be compelled to take, the system of Rotation and collection of survey fees as provided for in the Partition Act be continued during the interim period referred to. This would afford an opportunity to the Surveyors' Institute of Ceylon an island-wide organization to make submissions to the Judicial Officers' Conference for its consideration.

We appreciate the fact that as a body of responsible professional men, who have been Commissioners of the Courts for a period ranging from 25 to 3 years, it would be repugnant for us even to seem non-co-operative, but, if force of circumstances compel us, we would have no alternative other than to deprive ourselves of service we could otherwise continue to place at the disposal of the Courts, as intimated in our letter of 25th November 1957.

We are, Sir,
Your obedient Servants,

Sgd J. T. David

T. P. Murray

B. Samarasinghe

P. Mapalagama

G. Herat

U. B. Tennakoon

R. C. O. de la Motte

R. M. de Zilva

R. T. Samarasinghe

S. M. Talwatte

E. R. Claasz

L. B. Beddewela

Licensed Surveyors."

A further interview with the District Judge was sought and granted on 18th March 1958 to the representative of the Surveyors and thereafter on 22nd April 1958 the following letter was sent by them to the District Judge :—

“ Hebron
Peradeniya
22nd April 1958

The District Judge
Kandy.

Court Commissions

Sir,

I conveyed all that transpired at the interview granted by you to me on the 18th March 1958 to all the surveyors as desired by you.

I regret to inform you that it has not been found possible to alter the decision already arrived by us.

We are therefore returning herewith all commissions on which no action has been taken up to date.

I am, Sir,
Your obedient Servant,
Sgd J. T. DAVID
On behalf of Kandy Survey
Commissioners.”

The attitude of the respondent and the other land surveyors as revealed in the letters reproduced above does not in any way excuse, far less mitigate, his offence. The correspondence reveals that the respondent and his fellow surveyors were fully aware of their obligations to the Court and the gravity of the action they contemplated. Though their representations were all along confined to commissions issued in Partition actions in their letter of 25th November 1957 they extended them to even other actions relating to land thereby embarrassing the Court further. The Judge's discretion in the issue of Commissions for the survey of a land or the demarcation of boundaries is not fettered. Nor is his power to issue such Commissions confined to actions under the Partition Act. The Civil Procedure Code confers wide powers in that behalf (ss. 428, 429). He is free to issue a Commission to any surveyor who has expressed his willingness to carry out such Commission, nor is he confined to any list maintained by him. Although in the case of Partition Actions section 74 of the Partition Act, No. 16 of 1951, requires the Court from time to time to prepare a list of surveyors to whom Commissions may be issued under the Act the District Judge's discretion in the issue of Commissions is not fettered in any way by the existence of a list. But, for reasons of convenience, the Court rarely travels outside the list of approved surveyors maintained by it.

The surveyors were not only mistaken in the view they took of their rights but they were ill-advised. There is no doubt that the respondent did intend to and did in fact disobey the order of Court communicated to him by the Commission issued to him. Disobedience to an order of Court, which at all times is a serious offence, is aggravated when it is accompanied by veiled threats of mass disobedience.

The respondent as stated above is guilty of a gross contempt of Court. Contempt of Court is an offence ordinarily punishable with imprisonment. Is there any reason in the instant case why we should depart from the ordinary rule and refrain from inflicting the punishment of imprisonment and give the respondent the option of paying a fine? It seems to us that the respondent, by his subsequent conduct in carrying out the Commission referred to in the Rule and other Commissions, has shown that amount of contrition without which we would not be justified in departing from the ordinary rule of punishment. The Proctors for the plaintiff moved on 29th August 1958 that the Commission be re-issued to him. On 4th September 1958 the order that the Commission be re-issued was made and on 25th October 1958 he made his report and submitted his plan to the Court. In his evidence he stated that at the date of the trial of this offence he had executed all the thirty Commissions returned by him on 21st April 1958. He has also in an affidavit filed by him in this Court expressed his penitence for the offence committed by him. In our view there is sufficient ground to justify a departure from the ordinary rule of punishment and for not imposing on the respondent the punishment of imprisonment. But at the same time we cannot overlook the fact that his conduct constituted a serious interference with the administration of justice and delayed the proceedings in thirty civil actions.

We cannot also lose sight of the fact that the respondent was an active party to an organised attempt to intimidate the Court from carrying out its decision and to force it to grant what the respondent and his fellow surveyors wanted. Such organised interference with the administration of justice, such planned disobedience to the orders of the Court, calls for a punishment which will not only be adequate as far as the offender himself is concerned but will also deter him from repeating it and others from committing an offence of this nature. It is not in the public interest that those who seek to destroy the authority of the Court by mass disobedience or by organised means to bring the administration of justice into contempt should be lightly dealt with especially when they are officers of the Court acting under its authority, exercising powers granted by it, and enjoying its protection. We do not think that there is substance in learned counsel's submission that a surveyor to whom a Commission is issued is not an officer of Court. We have no doubt that while holding the Commission he is an officer of Court for the purpose for which he has been appointed. He is, when clothed with the authority of a Commission, no different from its other officers such as Advocates, Proctors and Fiscals. Officers of the Court cannot disobey its orders except at their peril. When those who are acting under the authority of the Court flout that very authority and seek to destroy it we would be wanting in our duty if we do not register our stern disapproval of

such conduct. Although, in view of the mitigating circumstances set out above, we have decided not to award the punishment of imprisonment, the fine that we impose should we think be exemplary. It should be commensurate with the gravity of the offence and sufficient to deter others.

In the instant case any fine short of one thousand rupees will not serve the ends of justice and the public interest and we accordingly sentence the respondent to pay a fine of one thousand rupees. If he does not pay the fine we sentence him to undergo simple imprisonment for one year.

DE SILVA, J.—I agree.

H. N. G. FERNANDO, J.—I agree.

Rule made absolute.

