ISMALEBBE
V.
ASSISTANT COMMISSIONER OF AGRARIAN SERVICES

SUPREME COURT.
BANDARANAYAKE, J., AMERASINGHE, J. AND DHEERARATNE, J.
S. C. APPEAL NO. 25/91.
S. C. L. A. 154 OF 90
C. A. 978/83.

AUGUST 19, 1991.

Tenant Cultivator - Agrarian Services Act, No. 58 of 1979, proviso to section 4 – Statutory interpreation – Discretion of Commissioner to prevent owner cultivator who owned paddy land in excess of five acres from cultivating paddy land as tenant cultivator - Ultra vires - Lack of Jurisdiction - Certiorari.

The Commissioner of Agrarian Services made Order declaring that the Appellant was not entitled to the rights of a tenant cultivator in terms of the proviso to section 4(2) of the Agrarian Services Act. The proviso gives a discretion to the Commissioner to declare that a tenant cultivator who is also an owner cultivator of not less than five acres of paddy land is not entitled to his rights under the Act. The Appellant sought to quash the Order on the ground that the Commissioner had acted ultra vires and without jurisdiction, since the proviso applied only where the Minister determines the extent of paddy land cultivable by a tenant cultivator under sub-section (2) of section 4 of the Act.

Held:

1. The proviso to section 4 is intended to govern the contents of both sub-sections (1) and (2).

2. Legislative intent should be gathered by reading the section in its entirety in the context of the object and purpose the legislature had in mind in enacting the provision. An intention to produce an unreasonable result is not to be imputed to a statute if some other construction is available.

3. The Commissioner of Agrarian Services acted within his rights to declare the tenant cultivator who owned paddy land in excess of five acres as not being entitled to cultivate any further land as a tenant cultivator.

Case referred to: *Artemion v. Procopioa* 1966 (1) Q.B.D. 878.

APPEAL from a judgement of the Court of Appeal.

L. Kadirgammar with *K. Thevarajah* and *Miss Lalitha Senaratne* for Appellant.

R. K. W. Goonesekera with *S. Mahenthiran* for 2nd to 5th Respondents.

Cur.adv.vult.

November 08, 1991.

BANDARANAYAKE, J.

The arguments in this case have centered around the interpretation of s.4 of the Agrarian Services Act. Much time has been spent on examining the Section, in particular, the proviso, and as to whether the proviso applies to sub-section 2 only having regard to the fact that it is placed immediately after sub-section 2 or whether the proviso applied to sub-section 1 as well.

It seems to me that on a plain reading of the Section it can be considered that the proviso stands by itself regardless of its position.

Sub-section 1 absolutely limits to five acres, the extent of land that any tenant cultivator can cultivate. By Sub-section 2 the Minister is given the power to further limit the extent of paddy land that a tenant cultivator may cultivate. In addition, the proviso permits the Commissioner of Agrarian Services, after due inquiry, to make order that, if a tenant cultivator is also the owner cultivator of not less than five acres of paddy land, he shall not be entitled to his rights as a tenant cultivator under the provisions of the Agrarian Services Act; that is to say that the Commissioner is given a discretionary power of preventing an owner cultivator of 5 or more acres of paddy land from cultivating any paddy land as a tenant cultivator as well. It seems that as a matter of policy, recognising the pressure on the availability of paddy land in certain areas the legislature is seeking to make available as much land as possible to tenant farmers who otherwise would have no access to cultivating paddy land. The proviso empowers the Commissioner to give effect to that intention. In respect of any such excess, the provisions of Sections 4(3), 4(4), 4(5) and 4(6) will apply as follows: with regard to the tenant's rights of choice of land to be cultivated (section 4 (3); the tenant's obligation to vacate the excess land (section 4(3); the remedies in the event of a failure of a tenant to observe his duty to vacate excess land (section 4(3) and the utilization of the excess land vacated by a tenant cultivator after the exercise of his choice (section 4(5) and section 4(6).

In this view of the matter, the Commissioner was within his rights to declare the tenant cultivator who owned paddy land in excess of five acress as not being entitled to cultivate any further land as a tenant cultivator. I therefore dismiss the appeal with costs.

Amerasinghe, J. — I agree.

November 09, 1991.

DHEERARATNE, J.

This is an appeal from the judgment of the Court of Appeal refusing to quash by way of a writ of certiorari the order made by the Commissioner of Agrarian Services declaring that the appellant was not entitled to the rights of a tenant cultivator in terms of the proviso to section 4(2) of the Agrarian Services Act, No. 58 of 1979. The foundation for the application by way of the writ was that the Commissioner had acted ultra vires and without jurisdiction.

In order to appreciate the point of law urged on behalf of the appellant, it would be useful at this stage to set out in full section 4 of the relevant Act.

> " 4 (1) The maximum extent of paddy land that could be cultivated by a tenant cultivator shall be five acres.
>
> (2) The Minister may subject to the provisions of subsection (1) by Order published in the Gazette determine the extent of paddy land that may be cultivated by a tenant cultivator in any district to which such Order relates:
>
> Provided, however, that where the Commissioner is satisfied after due inquiry that a tenant cultivator is also an owner cultivator of any paddy land of not less than five acres in extent, the Commissioner may declare that such tenant cultivator shall not be entitled to his rights as a tenant cultivator under the provisions of this Act, and accordingly the provisions of subsections (3), (4), (5) and (6) of this section shall apply to such tenant cultivator,
>
> (3) The tenant cultivator shall, if he is in occupation of an extent of paddy land in excess of the extent specified in an Order under sub-section (2), subject to

the approval of the Commissioner, be entitled to select the extent of paddy land which he is entitled to cultivate, and shall vacate the balance extent on being ordered to do so by the Commissioner.

(4) Where a tenant cultivator fails to comply with the provisions of sub-section (3) he shall be evicted from the extent of paddy land in excess of the extent specified in the Order under sub-section (2) and the provisions of section (6) shall apply to any such eviction.

(5) On vacation of such extent by the tenant cultivator, the landlord shall, with the approval of the Commissioner,

(a) be entitled to cultivate such extent on such conditions as may be prescribed; or

(b) appoint one or more tenant cultivators for such extent within such period as may be prescribed.

(6) On failure of the landlord to take action under the provisions of paragraph (a) or paragraph (b) of sub-section (5) within the prescribed period the Commissioner shall be entitled to appoint a suitable person to cultivate that extent of paddy land".

It is common ground that no order has been made by the Minister so far in terms of sub-section (2) applicable to the particular district in which the disputed paddy land is situated and for that matter my own inquiries reveal that no such order has been made in respect of any district in the island. The contention advanced on behalf of the appellant is that the proviso governs only sub-section (2) and it springs into life solely upon the Minister making an Order in terms of that sub-section. If that contention is correct clearly the Commissioner has acted ultra vires and without jurisdiction.

Apart from several points of criticism of the judgment of the Court of Appeal which I need not enumerate here, two

principal grounds were urged on behalf of the appellant in support of the contention seeking to restrict the operation of the proviso to the contents of sub-section (2) only, and they are:—

(1) The punctuation used in section 4 namely that a full stop appears at the end of sub-section (1) whereas a colon appears in sub-section (2) before the proviso begins.

(2) To enable the proviso to be extended to sub-section (1) of section 4, that section should be rewritten as follows:—

(i) In the proviso the words "and accordingly the provisions of subsections (3), (4), (5) and (6) of this section shall apply to such tenant cultivator" would have to be deleted in toto; and/or

(ii) (a) in sub-section (3) the words "in excess of such extent specified in the Order under sub-section (2)" will have to be deleted and words such as eg. "in excess of five acres as specified in sub-section (1) or in excess of the extent specified in an Order under sub-section (2)" would have to be substituted.

(b) In sub-section (4) the words "in excess of the extent specified in the Order under sub-section (2)" would have to be deleted and words as at (a) above have similarly to be substituted.

(The above formulation of this submission taken verbatim from the petition of appeal, was adopted by learned counsel for the appellant in the course of his argument.)

Bindra's Interpretation of Statutes (7th Edition) after an exhaustive dissertation on the use of punctuations as an aid to

interpretation, at page 68 sums the position in the following words:—

"To summarize, while marks of punctuation contained in a statute will not generally be wholly ignored by the Court in interpreting a statutory provision, it may not always be safe to rely on punctuation as a delivering factor. Great importance will be attached by the Court to the .....(sic) employed by the legislative and if it is found that the word (sic) used in the section when read as a whole, clearly furnish a clue to the legislative intent underlying the section and they admit of an interpretation consistent with the said legislative intent, any punctuation work which is inconsistent with such construction will be disregarded and the punctuation will not be allowed to control the plain meaning of the text".

Thus it appears that the punctuation cannot be considered to be a decisive and a safe guide for discovering the legislative intent. In any event the comma appearing at the end of that very proviso in the original Act which cannot be justified under any circumstances and rightly substituted by a fullstop in the Revised Enactments of 1980, fortifies me in the view I have taken that punctuation cannot be considered that sacrosanct.

The second argument of learned counsel for the appellant that section 4 has to be rewritten as suggested, "if the proviso is meant to be annexed to sub-section (1) as well" does not appear to me to bear scrutiny at all. I see no necessity to delete from the proviso the words "and accordingly the provisions of sub-sections(3), (4), (5) and (6) of this section shall apply to such tenant cultivator," to enable the proviso to be made applicable to sub-section (1) as well. The proviso contemplates the case of a tenant cultivator, who, by virtue of the fact that he is also an owner cultivator of an extent of paddy which is not less than five acres, becoming disentitled to his rights of a tenant cultivator upon a declaration made by the Commissioner after inquiry. So, even if the proviso applies

only to the case of a tenant cultivator in a district to which an Order made by the Minister relates as contemplated in sub-section (2), the words suggested to be deleted from the proviso must necessarily remain. The submission made regarding the necessity to delete the words "in excess of the extent specified in the Order under sub-section (2)" in both sub-sections (3) and (4) and the substitution therefor the words "in excess of five acres as specified in sub-section (1) or in excess of the extent specified in an Order made by subsection (2), in order to enable the proviso to be annexed to subsection (1), appears to be manifestly fallacious, because it concedes the necessity of such amendment even if the proviso is annexed to sub-section (2) only.

In my view the legislative intent should be gathered by reading section 4 in its entirety in the context of the object and purpose the legislature had in mind in enacting the provision. It will be perhaps useful to bear in mind the legal character of a "cultivator" in attempting to do so.

By section 68, Act, No. 58 of 1979 defines a cultivator as follows:—

> "Cultivator with reference to an extent of paddy land means any person other than an Agrarian Services Committee, who by himself or by any member of his family or jointly with any other person, carries out on such extent:
>
> (a) two or more operations of ploughing, sowing and reaping; and
>
> (b) the operation of tending or watching the crop in each season during which paddy is cultivated on such extent".

The above definition contained in the Act, except for some insignificant modifications, substantially corresponds to the definition of a cultivator given in its legislative predecessor the

Law No. 42 of 1973. It is significant to observe that whether a cultivator is an owner cultivator or a tenant cultivator such a person must necessarily possess the attributes of a cultivator as defined above. The law apears to have been consistent in frowning upon both absentee landlordism and absentee tenantry and ensuring the personal attendance of a cultivator in certain major operations of cultivating paddy. This principle accords with one of the purposes of the Act as evidenced from its preamble namely, "..... to provide for maximum productivity of paddy lands..... through the proper use and management of Agricultural crops".

In this legislative background it is not surprising that the law endeavoured to ensure that no tenant cultivator should bite off more than he could chew. Thus the Act, No. 58 of 1979 brought in a new feature by enacting section 4(1) which was absent in any of its legislative predecessors in limiting the maximum extent of paddy land that could be cultivated by a tenant cultivator. With the birth of this new concept of a ceiling, two other questions naturally arose. Firstly, should the ceiling be uniformly applied to all parts of the country irrespective of the possible differing conditions like the availability of paddy lands? Secondly, should an owner cultivator of not less than five acres of paddy land whose personal attendance is required for such cultivation be permitted to be a tenant cultivator of any extent of paddy land which in turn demands his personal attendance? The law appears to have provided the answers in enacting sub-section (2) with its proviso, the proviso thus manifestly intended to govern the contents of both sub-sections (1) and (2). Had the legislature intended the proviso to govern only sub-section (2) I would have expected it to have used the words "such a tenant cultivator" instead of the unrestricted words "a tenant cultivator" in the 2nd line of the proviso.

If the interpretation sought to be placed on the proviso to sub-section (2) on behalf of the appellant is correct, an owner

cultivator of not less than five acres of paddy is liable to lose his rights as a tenant cultivator in an area covered by the Order of the Minister, whereas his counterpart in the area outside would not be so liable. We have not been persuaded to accept a rationale emanating from within the four corners of the Act justifying such differential treatment. As stated by Dankwert L.J. in Artemion v. Procopioa. "An intention to produce an unreasonable result is not to be imputed to a statute if some other construction is available".

Although the foregoing reasons are sufficient to dispose of this appeal I am constrained to make a few observations on section 4 before I part with this judgment. While the section makes provision for ejectment of a tenant cultivator who is in occupation of an extent of paddy land in excess of the extent specified in an order made by the Minister under sub-section (2), it has failed to make parallel provision for ejectment of a tenant cultivator who is in occupation of an extent of paddy land in excess of a maximum paddy land stipulated in sub-section (1). The words of the proviso of the subsection (2) "and accordingly the provisions of sub-sections (3), (4), (5) and (6) of this section shall apply to such tenant cultivator" would be senseless and would remain unworkable, unless having regard to the obvious legislative intent, they are construed to mean that those sub-sections shall apply *"mutatis mutandis"*. For the above reasons I am unable to commend the wording of section 4 as a thoughtful exercise in model draftmanship. However, these infirmities in the section in no way help to buttress the contention of the appellant.

The appeal is dismissed with costs.

Appeal dismissed.