

ABEYSIRI
v.
PREMARATNE

COURT OF APPEAL
JAYASINGHE, J.
JAYAWICKRAMA, J.
CA(PHC) 67/96
HC NEGOMBO 2/95
20TH OCTOBER, 2000

Agrarian Services Act 58 of 1979 - Order under S.57(1) - High Court of the Provinces (Special Provisions) Act 19 of 1990 - S.3, S.4 - Constitution Article 154 P(4) - 13th Amendment - Appellate/Revisionary Jurisdiction of The High Court - Orders under S.57(11) - Irrigation work - Cultivation Rights - Power of Commissioner to Inquire S.34, S.35.

The Appellant complained to the Commissioner of Agrarian Services that the Respondent had constructed a wall across the irrigation channel which fed his paddy field. An Inquiry was held under S.56(1) the Commissioner was of the view that, a wall had been constructed, and a direction was given to demolish the said wall.

The High Court reversed the said Order on the ground that Commissioner has no power to make any Order, in respect of an obstruction to a irrigation work.

Held :

(i) In terms of S.3 and S.4 of Act 19 of 1990, High Court has Appellate/ Revisionary jurisdiction only in respect of orders made under S.5 & S.9 of the Agrarian Services Act.

(ii) According to Article 154 P(4) of the 13th Amendment, the High Court has jurisdiction to issue writs of 'Certiorari' against any person exercising within the province any power under any law or any statute made by a Provincial Council, established for that province in respect of any matter set out in the Provincial Council list.

(iii) An inquiry in respect of an obstruction upon any channel or water course comprised in any minor irrigation work is not a matter set out in the Provincial List.

The Order of the High Court Judge is void ab-initio as there was total want of jurisdiction.

(iv) In terms of the Provisions of Act 58 of 1979 the Commissioner has the power to inquire into any obstruction to irrigation work and prosecute

persons who are guilty. The provision take away the jurisdiction of the Courts by necessary implication on a parity of reasoning.

AN APPEAL from the Order of the High Court of Negombo.

Case referred to :

1. *Premathilaka v. Kularatne* (1996) 2 SLR 257

Rohan Sahabandu with Athula Perera for 2nd Respondent-Appellant.

W. Dayaratne for Petitioner-Respondent.

Cur. adv. vult.

November 14, 2000.

JAYAWICKRAMA, J.

This is an appeal to set aside the order of the learned High Court Judge of Negombo dated 23. 01. 1996 and to confirm the order of the Assistant Commissioner of the Agrarian Services, Gampaha dated 24. 04. 1995.

The 2nd Respondent-Appellant and some other cultivators made a complaint to the Additional Divisional Secretary of Divulapitiya and the Assistant Commissioner of Agrarian Services, Gampaha that the Plaintiff-Respondent has constructed a wall across the irrigation channel which fed the paddy field cultivated by the Appellant and the other cultivators. The 1st Respondent-Respondent inquired into the matter and by his order dated 24. 04. 1995 held that the Petitioner-Respondent had constructed a wall across the channel and obstructed the irrigation channel and directed that the said wall be demolished on or before 30. 04. 1995.

Against this order the petitioner filed a writ application before the High Court of Negombo and the learned High Court Judge by his judgment dated 23. 1. 1996 held that Section 57(1) of the Agrarian Services Act does not empower the Commissioner to inquire into and make orders as "the section does not include irrigation works within the scope of such inquiry". The learned High Court Judge further held that the "purported inquiry held by the 1st Respondent on the complaint of obstruction to a irrigation channel by the

petitioner, at the instance of the 2nd Respondent, is both contrary to law and without any authority of law; and the impugned order made by the 1st respondent on those proceedings therefore has no force or effect in law”.

The Assistant Commissioner of Agrarian Services by P6 dated 24. 04. 1995 purported to make his order under Section 57(1) of the Agrarian Services Act. The Assistant Commissioner in his affidavit filed in this Court states that the inquiry was held under Section 56(1) of the Agrarian Services Act and that due to a typographical error, it was stated in P6 that the order was being conveyed under Section 57(1) of the Act. This fact is correct as the proceedings dated 29. 03. 1995 clearly states that the inquiry was held under Section 56(1) of the Act.

According to Sections 3 and 4 of the High Court of the Provinces (Special provisions) Act No. 19 of 1990 “a High Court shall exercise appellate and revisionary jurisdiction in respect of orders made under Section 5 or Section 9 of the Agrarian Services Act No. 58 of 1979, in respect of any land situated within that province”.

According to Article 154 P(4) of the 13 amendment to the Constitution, a High Court shall have jurisdiction to issue according to law, writs of certiorari etc against any person exercising, within the province, any power under any law; or any statute made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council list. An inquiry in respect of an obstruction upon any channel or watercourse comprised in any minor irrigation work is not a matter set out in the Provincial list.

In view of the above provisions of law a High Court of the province has appellate and revisionary jurisdiction only in respect of orders made under Section 5 and Section 9 of the Agrarian Services Act. Therefore the High Court has no appellate and revisionary jurisdiction in respect of orders made under the other Sections of the Agrarian Services Act. As far as the Agrarian Services Act is concerned the only appellate

and revisionary jurisdiction which a High Court has is in regard to orders made under Section 5 or Section 9 of the Agrarian Services Act. In the instant case the Assistant Commissioner of the Agrarian Services has made his order under Section 56(1) of the Agrarian Services Act. Against such an order a provincial High Court has no appellate, revisionary or writ jurisdiction.

Therefore the judgment in the instant case by the learned High Court Judge is void ab initio as there was a total want of jurisdiction in the Court. Therefore I hold that the learned High Court Judge has erred in law by entertaining and deciding on the writ application made to the High Court.

The learned Counsel for the Petitioner-Respondent submitted that the Assistant Commissioner has no jurisdiction to inquire into in respect of an obstruction to irrigation works. He contended that provisions of the Act are very clear and the Act has always described 'irrigation work' and 'cultivation rights' as two distinct elements of the Agrarian Services Act and therefore the authority under Section 57 cannot empower the Commissioner to inquire into any complaint on an alleged obstruction to a irrigation work.

The preamble to the Agrarian Services Act set out among other things to provide for maximum productivity of paddy and other agricultural lands through the proper use and management of agricultural crops and to confer and impose certain powers and duties on the Commissioner. According to section 39(5) of the Act every Deputy and Assistant Commissioner appointed under this Section shall in the exercise of the powers and the performance of his duties under this Act be subject to the direction and control of the Commissioner.

Under Section 42(1)(d), the Commissioner or any other person generally or specially authorized by him in that behalf may summon a meeting of the owner cultivators and occupiers of agricultural land within such area as may determined by

him for the purpose of making rules among other things relating to the efficient management of irrigation water.

Under Section 42(10) there is provision to select persons to assist the Cultivation Officer in matters relating to the protection of irrigation works and for the conservation of water supplied therefrom.

Under Section 42(11) any person so selected shall have, subject to the control and direction of the Commissioner or any person authorized in that behalf by the Commissioner, the power to order any owner or occupier of agricultural land to take steps as he may deem necessary regarding the collective responsibilities of such owners or occupiers in regard to irrigation and cultivation practices and in respect of the protection of minor irrigation works and the conservation of water supplied therefrom.

Under Sections 34, and 35 of the Act there are provisions for the efficient management of irrigation water under the Commissioner's supervision. For that purpose the Commissioner has the power to allocate duties to owner cultivators or occupiers. Under Section 35 of this Act for the purpose of cultivating agricultural lands in accordance with the provisions of this Act, the Commissioner by a supervision order place the owner cultivator or occupier under the Commissioner's supervision.

Under Sections 43 and 46 of the Act the Commissioner has the power to appoint Agrarian Services Committees to function under his direction and supervision. Such Agrarian Services Committee shall co-ordinate the agricultural activities and implement the agricultural policies of the government and shall be subject to the control and direction of the Commissioner.

Under Section 48 of the Act where an Agrarian Services Committee after being directed by the Commissioner to exercise, perform or discharge any power, duty or function conferred or imposed on or assigned to such committee by or

under this Act or by any regulations made thereunder, fails to do so within the time specified in the direction, the Commissioner may exercise, perform or discharge such power, duty or function and any act so done by the Commissioner under the provisions of this Section shall be deemed to have been done by such committee.

Under Section 55 of the Act there may be appointed by name or by office such number of Cultivation officers as may be necessary for the purpose of this Act, and the officers so appointed shall be subject to the general control and direction of the Commissioner and such officers as directed by the Commissioner prosecute any person who commit any offence referred to in Section 56.

Under Section 56 of the Act, every person who wilfully and mischievously blocks up, obstructs or encroaches upon or causes to be in any way blocked up, obstructed or encroached upon any channel or watercourse comprised in any minor irrigation work; or wilfully and mischievously cuts the bund, bank, or any part of any minor irrigation work; or wilfully and mischievously causes waste of water conserved by any minor irrigation work; or wilfully and wrongfully draws off or converts to his own use any such water, shall be guilty of an offence under this Act.

Every person who without lawful cause resist or obstruct the Commissioner or any person authorized in that behalf by the Commissioner in/the lawful discharge of any duty imposed upon him by this Act shall be guilty of an offence [Section 56(2)].

Under Section 57 the Commissioner has power on a complaint made to him to inquire into any interference with the cultivation right of such owner cultivator or occupier. This provisions is applicable only to cultivation rights and not interference with regard to irrigation work.

Every person who is guilty of an offence under this Act may be prosecuted before a Magistrate and on conviction after trial be liable to imprisonment and or/fine. (Section 58).

When one takes into consideration the above provisions it is abundantly clear that the Commissioner or any other officer or person under the supervision and direction of the Commissioner has the power to inquire into in respect of obstruction to irrigation work and to prosecute persons who are found guilty. In view of the above provisions the contention of the learned counsel for the petitioner-respondent, that the Commissioner has no jurisdiction to inquire into a complaint of obstruction in respect of irrigation work is without any merit.

The preamble to the Agrarian Services Act sets out that it is an Act to provide security of tenure for tenant cultivator of paddy lands, to provide for the establishment of Agrarian Services Committees and to confer and impose powers of supervision to be exercised by the Commissioner over such committee, and provide for the determination of tenurial and other disputes relating to agricultural land by the Commissioner of Agrarian Services. The provisions of the Agrarian Services Act take away the jurisdiction of the Courts by necessary implication on a parity of reasoning. (Vide; *Premathilake v. Kularatne and others*⁽¹⁾).

In view of the above reasons I set aside the above judgment of the learned High Court Judge dated 24. 01. 1996 and confirm the order made by the Assistant Commissioner of Agrarian Services of Negombo dated 24. 04. 1995 which is marked 'P6'

The appeal is allowed with cost fixed at Rs. 10,000/- payable by the Petitioner-Respondent to the 2nd Respondent-Appellant.

JAYASINGHE, J. - I agree.

Appeal allowed.

Note by Editor : The Supreme Court in S.C.Spl LA 256/2000, on 12. 01. 2001 refused Special Leave to the Supreme Court.