KAMALARATNE
v.
SAMARATUNGE

COURT OF APPEAL
JAYASURIYA, J.
C.A. NO. 65/89
A.T. GAMPAHA NO. A.S. 5/3/732
JANUARY 30, 1997.

Agrarian Services – Agrarian Services Act, No. 58 of 1979, ss. 5 (1), 7 (3) and (6), and 68 – Tenant cultivation –Tenant cultivation engaging hired labour – Tender of documents with written submissions – Registration of documents – Prescribed form of document.

Held:

1. Under section 68 of the Agrarian Services Act any person who by himself or by any member of his family or jointly with any other person, carries out two or more of the operations of ploughing, sowing and reaping and the operations of tendering or watching over the crop during the seasons when paddy is cultivated is a tenant cultivation. The inclusion of the words "jointly with any other person" is a change in the law. Thus a tenant cultivator who himself takes part in two of these operations jointly with *hired agricultural labourers,* by engaging such labour on hire, does not violate any prohibition enacted by the law and, consequently, there would be no forfeiture of his rights.

2. The marking of documents and an encumbrance sheet with the written submissions deprived the adversary of the opportunity and the right to cross-examine a witness on the contents of the documents. This was a grievous defect of procedure.

3. The document of nomination have not been duly registered in the registers prescribed by the regulations and this renders such document invalid in terms of section 7 (6) of the Agrarian Services Act.

4. The document had further to be substantially in the prescribed form as provided for in subsidiary legislation as spelt out in section 7 (3).

APPEAL from order of Asst. Commissioner under section 5 (6) of the Agrarian Services Act, No. 58 of 1979.

W. Dayaratne with *Nimal Ranaweera* and *Ranjika Jayawardane* for applicant-appellant.

Manohara de Silva with *D. Weeraratne* for the respondent-respondent.

Cur. adv. vult.

January 30, 1997

F. N. D. JAYASURIYA, J.

I have heard both the learned counsel for the appellant and the learned counsel for the respondent. The Assistant Commissioner of Agrarian Services, Gampaha District, has arrived at the conclusion that since the applicant reaped the paddy jointly with the assistance of hired agricultural labourers that there has been a violation of the prohibition laid down by the law and, consequently, there results a forfeiture of his *ande* rights. I hold that this finding is due to a misdirection both in regard to the law and in regard to the facts established at the inquiry. Under the provisions of the Paddy Lands Act and under the provisions of the Agricultural Lands Law, one came across a stringent definition of the term "cultivator". The engagement of agricultural labour, *even jointly with the ande cultivator,* resulted in a forfeiture of *ande* rights. The provisions of the Agrarian Services Act has effected a departure from such an exposition of the law. Section 68 of the Agrarian Services Act in defining the expression "cultivator" sets out that any person who by himself or by any member of his family or *jointly with any other person,* carries out two or more of the operations of ploughing, sowing and reaping and the operations of tending or watching over the crop during the seasons when paddy is cultivated on such paddy field, is a tenant cultivator. The change in the law has been effected by the enactment of the expression "or jointly with any other person". Thus, a tenant cultivator who himself takes part in two of these operations *jointly with hired agricultural*

labourers, by engaging such agricultural labour on hire, does not violate any prohibition enacted by the law and, consequently, there would be no forfeiture of his rights.

The unchallenged evidence in this case establishes the fact that the **applicant himself jointly with hired agricultural labourers took part** in the operation of reaping the paddy. It is in evidence that he solely engaged himself in the process of sowing. Thus, these aspects relating to the law and the factual position established by the attendant circumstances have been lost sight of by the inquiring officer. This amounts to a non-direction and a misdirection both on the law and on the facts and thereby there is a consequent error of law embodied in the order dated 15. 11. 1989.

In regard to the nomination of a successor in terms of section 7 of the Agrarian Services Act, the Assistant Commissioner has concluded that the nomination impugned upon in the application was proved to be a valid nomination. The material on the record discloses that certain documents and an encumbrance sheet had not been marked in the course of the inquiry, but had been tendered subsequent to the inquiry with the written submissions of counsel. If that was the manner in which these documents were placed before the Assistant Commissioner, the adversary would not have had the opportunity and the right to cross-examine a witness on the contents of these documents. Such tender constitutes a grievous defect of procedure. Further, a perusal of document P1, which is a deed of transfer and its concomitant two annexes which are said to be the documents relating to the registration of the nomination, do not on their examination disclose that these documents have been registered by the Registrar of Lands of the district in which the *land* to which that document refers is situated. The effect of a failure to duly register such document in the registers prescribed by the regulations renders such document invalid in terms of section 7 (6) of the Agrarian Services Act.

Another issue that arises is whether this document is substantially in the prescribed form as provide for in subsidiary legislation as spelt out in section 7 (3). The Assistant Commissioner has not given his mind to these aspects before he concluded that the nomination was valid in law. In this respect too his order is tainted with error.

In the circumstances, I set aside the order of the Assistant Commissioner of Agrarian Services, Gampaha, dated 15. 11. 89 and I direct that a fresh *de novo* inquiry be held on the application preferred by the complainant-applicant dated 5. 6. 89 and at that inquiry both parties would be entitled to lead fresh evidence and also legally admissible evidence which would be relevant to establish the due proper registration of the nomination document relating to the successor tenant cultivator in terms of section 7 (8) of the Agrarian Services Act. In the result, I allow the appeal without costs and proceed to set aside and vacate the order of the Assistant Commissioner of Agrarian Services (Inquiries), Gampaha, dated 15. 11. 1989.

Enquiry de novo ordered.