

1977 Present : Malcolm Perera, J., and Sharvananda, J.

M. N. SAWSIRIYA, Respondent-Appellant

and

Y. D. PEMA, Applicant-Respondent.

S. C. 73/75—A. T. 21/2/P/1

Agricultural Tribunal—Jurisdiction to enter into inquiry regarding eviction—Is the applicant a tenant cultivator—Preliminary question to be determined by Tribunal—Applicant found to have ceased to be a cultivator within the meaning of section 54—Has the Tribunal jurisdiction—Agricultural Lands Law, No. 42 of 1973, sections 2, 3, 19, 54.

Tribunal entrusted with judicial functions by statute—Can it delegate such function to any other person or body —Effect of such delegation.

Held : (1) That the Agricultural Tribunal to whom an application has been made by a person claiming to be a tenant cultivator seeking relief on the basis that he has been evicted, has first to decide the preliminary question whether at the time of the alleged eviction the applicant was the tenant cultivator within the meaning of the provisions of the Agricultural Lands Law, before proceeding to decide the question whether that person had been evicted. If on the evidence placed before it the Tribunal comes to the conclusion that the applicant has ceased to be a cultivator within the meaning of section 54 of the said Law by reason of the fact that he had ceased to cultivate the field let to him, it has no further jurisdiction to enter into the inquiry relating to eviction. Jurisdiction of the Agricultural Tribunal is confined to eviction of a tenant cultivator only.

(2) That the Agricultural Tribunal cannot delegate a judicial function which it exercises in terms of the Agricultural Lands Law to a third party. No judicial tribunal can delegate its functions unless the statute creating that tribunal enables it to do so expressly or by necessary implication.

APPPEAL from an order of the Agricultural Tribunal.

Both parties absent and unrepresented.

Cur. adv. vult.

March 11, 1977. SHARVANANDA, J.

In this case, the complaint stated that he was the ande-cultivator of the field called "Nethigossa" and that in March, 1973, he was evicted from this field by the respondent. The respondent, in his evidence, has stated that he purchased the said field from one Podi Appuhamy. He admitted that at the time of his purchase, the complainant was in possession of the field as ande-cultivator. According to him, the complainant had neglected the maintenance of the field and taken no interest in the cultivation of the field. The respondent complained that as a result

of the complainant's neglect, extensive damage had been caused to the field. The respondent had invited the ande-cultivator to join him in the cultivation of the field, but the complainant had not accepted the offer. Since the ande-cultivator was not cultivating the field, the respondent started cultivating the field in question in March, 1973. The respondent stated that thanks to his efforts, the yield had doubled. According to the respondent, the reason why he took over the cultivation of the field from the applicant was because the applicant had shown no interest in its cultivation and the field was lying fallow.

By its order, the Agricultural Tribunal found that the complainant was, in fact, the ande-cultivator of the field and that in March, 1973, he had been evicted from the field by the respondent. The Tribunal also accepted the evidence of the respondent that the complainant had shown no interest in the cultivation of the field and had ceased to cultivate the field for no valid reason. It disapproved the conduct of the applicant and stated that it is a loss to the country to allow an ande-cultivator of the applicant's type, who had shown no interest in cultivating the field, to be holding on to the field. Having reached that conclusion, it directed the Cultivation Committee of Eheliyagoda to inquire whether the complainant was working the field efficiently and that if he had failed to do so, to take action against him. It is to be noted that no notification, in terms of Section 19 of the Agricultural Lands Law, had been given by the tenant-cultivator to the landlord or the Cultivation Committee that he was unable to cultivate the field during the paddy cultivation season.

In my view, the Tribunal has misdirected itself in delegating its functions of adjudication to the Cultivation Committee of Eheliyagoda. A judicial function, such as the Tribunal was exercising in this case, cannot be delegated to a third party. No judicial tribunal can delegate its functions unless the statute creating that tribunal enables it to do so expressly or by necessary implication. While an administrative function can often be delegated, a judicial function cannot, unless the statute authorises the delegation. The relevant provision of the Agricultural Lands Law (section 3) does not lend itself to such construction. Having reached the conclusion that the applicant was not cultivating the field in question, the Tribunal had to make consequential order thereon. It had erred in delegating its judicial functions under the Agricultural Lands Law, No. 42 of 1973 (hereinafter referred to as the Lands Law) to the Cultivation Committee by the direction referred to above.

In view of the fact that the Tribunal has accepted the evidence of the respondent-appellant that with a view to efficiently cultivating the field he was compelled to take over the cultivation of the field in question as the applicant was not, in fact, cultivating the field, the question arises whether there was 'eviction' of the applicant in terms of the Lands Law. The jurisdiction of the Agricultural Tribunal is confined to eviction of a tenant-cultivator only.

The inquiry under section 3(3) of the Lands Law is initiated by a tenant-cultivator. The function of an Agricultural Tribunal on an application made under section 3(3) is to decide the question whether or not such a tenant-cultivator had been evicted (section 3). Section 54 of the Lands Law defines the word "evict" to mean, in relation to a tenant-cultivator "to deprive, by direct or indirect method, the tenant-cultivator of his right to use, occupy and cultivate the whole or any part of the extent of the paddy land let to him". A tenant-cultivator, in terms of section 2 of the Lands Law, is the cultivator of any extent of a paddy land let to him. 'Cultivator', with reference to any extent of any paddy land, has been defined to mean any person who carries out two or more of the operations of ploughing, sowing and reaping and the operation of tending or watching the crop in each season in which paddy is cultivated on such extent. The statutory obligation of a cultivator is to cultivate the field every paddy cultivation season as long as he continues to be the ande-cultivator, and, if he does not so cultivate it, he ceases to have the character of cultivator and *a fortiori* of a tenant-cultivator. The character of tenant-cultivator endures only so long as he performs the obligation of cultivating the field let to him. It is the activity of cultivation, within the meaning of the Lands Law, which sustains the character of tenant-cultivator. The Lands Law does not provide that once a person becomes a tenant-cultivator, he remains a tenant-cultivator irrespective of the fact whether he cultivates or not.

An Agricultural Tribunal to whom an application has been made under section 2(3) by a person claiming to be a tenant-cultivator has to decide the preliminary question whether, at the time of the alleged eviction, the applicant was a tenant-cultivator within the meaning of the provisions of the Lands Law, before proceeding to decide the question whether that person has been evicted. If, on the evidence placed before it, the Tribunal comes to the conclusion that the applicant has ceased to be a cultivator within the meaning of section 54 of

the Lands Law by reason of the fact that he has ceased to cultivate the fields let to him, it has no further jurisdiction to enter into the inquiry relating to eviction ; it has become functus to inquire into the question of the propriety of the eviction. If, on the other hand, it decides on the evidence that the applicant had been a cultivator of the field at the time of the eviction, then it has further jurisdiction go into the other questions involved in the application and is competent to make order for restoration of the ande-cultivator. The jurisdiction of the Tribunal to make order for the eviction of the landlord or for the restoration of the tenant-cultivator is dependant on an affirmative answer to the question whether the person evicted was in fact, at the time of the alleged eviction, a tenant-cultivator performing the agricultural operations required of him.

In this case, the Tribunal came to the finding that the applicant had ceased to cultivate the field and had thereby lost his status of tenant-cultivator. On reaching this preliminary finding, the Tribunal had no alternative but to dismiss the application. The applicant had no *locus standi* to maintain the application before the Tribunal. The Tribunal's jurisdiction to order restoration extended only to cases of eviction of a tenant-cultivator and if, on its preliminary finding, it comes to the conclusion that the applicant had ceased to be a tenant-cultivator by reason of the fact that he had ceased to cultivate or perform the Agricultural operations necessary to bear the character of cultivator, its jurisdiction in the matter comes to an end and it cannot proceed further with the inquiry. The Tribunal should have rejected the complaint of the applicant on the ground that he had ceased to be, at the material time of the eviction, a tenant-cultivator and hence had no *locus standi* to institute proceedings under section 3(3) of the Lands Law. True, he was at one time a tenant-cultivator, but he had shed that character prior to his being evicted and hence it was not competent for him to initiate proceedings under section 3(3) of the Lands Law under that provision. Only a tenant-cultivator could notify the Tribunal of his eviction. On such notification, the Tribunal holds an inquiry for the purpose of deciding the question whether or not the tenant-cultivator had been evicted. If, at such an inquiry, the Tribunal finds that the person evicted was not a tenant-cultivator it has to dismiss the complaint, as the basis of its further jurisdiction to make orders under section 3(8) of the Lands Law is dislodged. The proper forum for such a complaint is the ordinary civil court and not the Agricultural Tribunal constituted under the Lands Law.

In the instant case, the Tribunal having held that the applicant was not cultivating the field and had thereby ceased to be a tenant-cultivator at the relevant time of the eviction by the respondent, should have dismissed the complaint of the applicant instead of directing the Cultivation Committee of Eheliyagoda to make further inquiry and to take necessary steps against the applicant. It wrongly failed to do so.

I allow the appeal and set aside the order of the Tribunal referring the complaint to the Cultivation Committee and dismiss the applicant's application to the Tribunal. There will be no costs of the inquiry or of this appeal.

MALCOLM PERERA, J.—I agree.

Appeal allowed.