

TRUSTEES OF TAIYABBHAI CHILDREN'S TRUST
v.
ATTORNEY-GENERAL

COURT OF APPEAL.
WEERASEKERA, J.,
WIGNESWARAN, J.
APRIL 02, 1997.

Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 – Re-aquisition of land – Public Security Ordinance, section 5 – Compensation for loss of income and recovery of rates paid – De-requisitioning of land.

The plaintiff-appellant alleged that the premises, which was a bare land were requisitioned under Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973, promulgated under section 5 of the Public Security Ordinance with effect from 24.6.74 and de-requisitioned on 26.6.78 and instituted action for the recovery of a certain sum as compensation for the loss of income and for the recovery of a sum paid as rates.

The District Court upheld the objection of the defendant-respondent and rejected the plaint on the ground that the court has no jurisdiction to entertain the plaint.

Held:

(1) Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 in Rule 3 made provision for the payment of compensation on an application made to the Competent Authority. This regulation was promulgated under section 5 of the Public Security Ordinance by sections 7, 8, and 11, which lays down that any provisions of law which may be inconsistent with its provisions shall have no effect during its pendency and further states that no such rule, order or direction made or given thereunder shall be called in question in any court.

(2) Where a liability not existing under the common law is created by statute which at the same time prescribes a special and a particular remedy for enforcing it, that remedy provided by the statute must be followed and the common law mode of computation and payment of compensation must be deemed to have been effectively substituted and repealed. Therefore Regulation No. 1 of 1973 had ousted the jurisdiction of the court.

Per Weeramantry, J.

"It is now settled law that if on the footing of the averments in a plaint the claim made therein is clearly prescribed, the claim is liable to be dismissed without evidence being gone into or considerations of the averments in the answer."

APPEAL from the Judgment of the District Court of Colombo.

Cases referred to:

1. *Soysa v. Soysa* – 17 NLR 118.
2. *Read v. Samsudeen* – 1 NLR 292.
3. *Ratnam v. Deen* – 70 NLR 21.

Rohan Sahabandu for the plaintiff-appellant.

Adrian Perera, SSC for defendant-respondent.

Cur. adv. vult.

May 27, 1997.

WEERASEKERA, J.

The plaintiff-appellant instituted this action for the recovery of Rs. 36,000/- as compensation for the loss of income for the period 24th June, 1974 to 26th June 1978 and for the recovery of a sum of Rs. 723.49 as compensation for rates paid for the aforesaid period to the Colombo Municipal Council.

The plaintiff-appellants alleged that premises No. 150, Lukmanjee Square, Colombo 14 which was a bare land and of which the plaintiff-appellants were Trustees was requisitioned under Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 promulgated under section 5 of the Public Security Ordinance Chapter 40 of the Legislative Enactments with effect from June 1974 and de-requisitioned on 26th June 1978. It is for this period that the plaintiff-appellants claimed the aforesaid compensation.

The defence was two fold –

- (1) Should the plaint be rejected in terms of section 46(2) (i) of the Civil Procedure Code since the Court has no jurisdiction to entertain the plaint?
- (2) Is the action time barred?

The learned Additional District Judge of Colombo by his judgment of 10th December, 1984 rejected the plaint on ground (1). He did not consider ground (2) in consequence. This appeal is from that order.

I have considered the written submissions of both Counsel in the District Court and their submissions before me and the reasoning of the learned Additional District Judge and given them my best consideration.

Section 46(2) (i) of the Civil Procedure Code reads thus:

“When the action appears from the statement in the plaint to be barred by any positive rule of law the plaint shall be rejected”.

It is now settled law that if on the footing of the averments in a plaint the claim made therein is clearly prescribed, the claim is liable to be dismissed without evidence being gone into or consideration of the averments in the answer.

(Vide *Soysa v. Soysa*⁽¹⁾, also Bonser C.J. in *Read v. Samsudeen*⁽²⁾ and *Ratnam v. Deen*⁽³⁾).

The question that now has to be determined is whether Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 under which regulation the subject matter of the action was requisitioned and under which damages are claimed ousted the jurisdiction of Court. These Regulations have in rule 3 thereof made provision for the payment of compensation on application made to the Competent Authority. The Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 which was promulgated under section 5 of the Public Security Ordinance, by sections 7, 8 and 11 therein have not only made any provision of law which may be inconsistent with its provisions to have no effect during its pendency but also that no such rule, order or direction made or given thereunder shall be called in question in any Court.

In those circumstances where a liability not existing under the Common Law is created by statute which at the same time prescribes a special and a particular remedy for enforcing it, that remedy provided by the statute must be followed and the Common Law mode of computation and payment of compensation must be deemed to have been effectively substituted and repealed and in this instance by Rule 3 of the Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973.

I am satisfied that the learned Additional District Judge of Colombo had addressed his mind to the issue correctly and in a well considered judgment with which I concur, held that the Emergency (Cultivation of Food Crops) Regulation No. 1 of 1973 had ousted the jurisdiction of the Court and proceeded to reject the plaint.

The judgment of the learned Additional District Judge dated 10th December, 1984 is affirmed.

The appeal is dismissed with taxed costs payable by the plaintiff-appellants to the defendant-respondent.

WIGNESWARAN, J. – I agree.

Appeal dismissed.