

1976 Present : Sharvananda, J., and Wanasundera, J.

S. A. KANAGASABAI, Petitioner, and M. K. MYLWAGANAM,
Respondent

S. C. Application 471/76—M.C. Colombo 42282/1

Administration of Justice Law—Sections 62, 63, 65—Relevance of suit pending in civil court—Conditions precedent to the exercise of jurisdiction—Meaning of dispute affecting land.

(1) The mere fact that a suit is pending in a civil court does not deprive the Magistrate of jurisdiction to make an order under Sections 62 and 63 of the Administration of Justice Law, No. 44 of 1973.

(2) It is sufficient for a Magistrate to exercise powers under Section 62 if he is satisfied on the material on record that there is a present fear that there will be a breach of the peace stemming from the dispute unless proceedings are taken under the section.

(3) The Magistrate's jurisdiction under section 62 extends to disputes relating to the possession of business premises, and is not confined to disputes affecting agricultural or pastoral land.

(4) The inquiry under section 62 is directed to the determination as to who was in actual possession of the land on the date of the issue of the notice under Section 62 (1) irrespective of the rights of the parties or their title to the said land. On his reaching that finding the Magistrate may unless the facts fall within section 63(3) make an order under section 63(2).

APPPLICATION IN REVISION against an order of the Magistrate's Court, Colombo.

M. Tiruchelvam, with *N. Tiruchelvam* and *M. T. M. Faiz*, for the Petitioner.

H. L. de Silva, with *S. Mahenthiram* for the 1st Respondent.
Cur. adv. vult.

September 24, 1976. SHARVANANDA, J.—

This is an application to revise an order made by the Magistrate declining to proceed to act under section 62 of the Administration of Justice Law.

By his report dated 3.5.76. the Inspector of Police, Pettah, stated to Court that on a complaint made by the petitioner Kanagasabai that he was conducting a partnership business at premises No. 68A, 4th Cross Street, Pettah, and that after his closing the shop on 30.4.76 and was about to leave, he was forcibly pushed out by the respondent Mylwaganam who was occupying the other portion of premises No 68, 4th Cross Street, the Police visited the place and found that there was a wall which was separating premises No. 68A, from the rest of premises No. 68 and that this wall was demolished by the respondent Mylwaganam and both the premises were converted into one shop by him. The report also stated that there were two name-boards : (1) N. K. Mylwaganam & Co. (1st respondent's firm) and (2) M. Thasan Trades (Petitioner's firm), and there were two iron safes and three balances and tables and a heap of iron bars. The report also referred to the fact that both parties were inside the shop and could not come to a settlement about the possession of the premises. According to the report, as the Police expected a breach of the peace, they took charge of the keys of the shop from the respondent Mylwaganam and asked both parties to close the shop and go away from the premises.

The Inspector produced both the parties, namely the petitioner and the respondent, and moved the Court to take action under section 62 of the Administration of Justice Law. (Premises No. 68A, the right to possession of which is in dispute, is a defined portion of premises No. 68, 4th Cross Street. There is no dispute regarding the possession of the balance portion of premises No. 68. It is conceded that the respondent Mylwaganam is entitled to possession of that balance portion falling outside premises No. 68A). Though, according to the report dated 3.5.76, both the premises, namely, premises No. 68A and the balance portion of premises No. 68, have been closed on the orders of Court and the keys of which had been taken charge of by the Police and been produced in Court along with the report on 4.5.76, the Police, without any further order of Court, returned the keys of the balance portion of premises No. 68 to the respondent Mylwaganam. As the learned Magistrate in this case points out, the conduct of the Police, after having filed the report in Court and

produced the keys of premises No. 68 in Court, is highly arbitrary. The Police should have awaited the orders of Court and should not have done anything to affect the status quo. It is regrettable that the Police should have misconceived their functions and powers. Once the keys were productions in Court, they could have been returned by the Police to any party only on the orders of Court and not of any other authority. I concur with the Magistrate in condemning the action of the Police. Serious notice will be taken of any action by the Police which interferes with the orders of Court.

The inquiry on the Police report commenced on 11.5.76, at which both the petitioner and the respondent were present and represented. Counsel for the respondent Mylvaganam, at the outset informed the Court that his client had instituted action No. 3/1745/RE in the District Court of Colombo for a declaration that the petitioner Kanagasabai is not the tenant of premises No. 68A, 4th Cross Street, Pettah, and that the petitioner had no manner of right to occupy the said premises and for an interim and permanent injunction restraining the petitioner from entering into occupation of the said premises No. 68A. He also stated that in pursuance of his application for an interim injunction, the District Court had issued an ex parte interlocutory order under section 565 of the Administration of Justice Law. He submitted that in view of the proceedings pending in the District Court regarding the possession of premises No. 68A, the Magistrate's Court should not make any order under section 62 or 63 of the Administration of Justice Law.

By his order dated 22.6.76, the Magistrate held that in view of the application pending before the District Court, he should not proceed to act under section 62 of the Administration of Justice Law. Accordingly, he refused to proceed to inquire. It is this order which is sought to be revised.

In my view, the learned Magistrate has mis-directed himself as to the nature of the proceedings under section 62 of the Administration of Justice Law and the ambit of his jurisdiction in relation to proceedings pending in a civil Court. As was stated in *Imambu v. Hussenbi* (A.I.R. 1960 Mysore 203) : "If a civil Court decided the question of possession even for the purpose of giving an interim injunction, the Magistrate, acting under Section 145 of the Indian Criminal Procedure Code (which corresponds to section 62 of our Administration of Justice Law) should respect that decision. But the mere pendency of a suit in a civil Court is wholly an irrelevant circumstance and does not take away the dispute which had necessitated a proceeding under section 145. The possibility of a breach of the peace would still continue."

Section 62 of the Administration of Justice Law confers special jurisdiction on a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace. The jurisdiction so conferred is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred on the Magistrate is the prevention of a breach of the peace arising in respect of a dispute affecting land. The section enables the Magistrate temporarily to settle the dispute between the parties before the Court and maintain the status quo until the rights of the parties are decided by a competent civil Court. All other considerations are subordinated to the imperative necessity of preserving the peace. The section requires that the Magistrate should be satisfied, before initiating the proceedings, that a dispute affecting land exists and that such dispute is likely to cause a breach of the peace. But, once he is satisfied of these two conditions, the section requires him to proceed to inquiry and make order under section 63. The pendency of a civil suit in respect of the right in question is no bar to action being taken under section 62 of the Administration of Justice Law. At an inquiry under that section the Magistrate is not involved in an investigation into title or right to possession, which is the function of a civil Court. The action taken by the Magistrate is of a purely preventive and provisional nature in a civil dispute, pending final adjudication of the rights of the parties in a civil Court. The proceedings under this section are of a summary nature and it is essential that they should be disposed of as expeditiously as possible. Section 65 of the Administration of Justice Law expressly states that no order under section 62 or section 63 shall affect or prejudice any right or interest in any land or part of land which any person may be able to establish in a civil suit. Sub-sections (2) and (6) of section 63 of the Administration of Justice Law underline the fact that the order made by the Magistrate under sections 62 and 63 is intended to be effective only up to the time a competent Court is seized of the matter and passes an order of delivery of possession to the successful party before it, or makes an order depriving a person of any disputed right and prohibiting interference with the exercise of such right.

The plaint in Case No. 3/1745/RE by the respondent Mylvaganam was filed in the District Court of Colombo on 7.5.76 subsequent to the commencement of proceedings in the Magistrate's Court. In that action, the respondent prayed for a declaration that the defendant (the present petitioner) was not the tenant of the said portion No. 68, 4th Cross Street (commonly referred to as No. 68A, 4th Cross Street), and that the defendant had no manner of right to occupy the said portion and for an interim injunction preventing the defendant from entering into

occupation of the said portion until a final determination of the action and also for a permanent injunction restraining the defendant from entering the said portion and premises. By the interlocutory order dated 10.5.76 made in terms of Section 365 (1) (b) of the Administration of Justice Law, the District Judge ordered that "the 17th day of May, 1976, is hereby appointed for a determination of the matter of the applicant and that the matter will be inquired into on the said 17th day of May, 1976". This is the interlocutory order referred to by Counsel for the respondent in his submissions made before the Magistrate on 11.5.76 and by the Magistrate in his order dated 22.6.76. It is to be noted that interim injunction in terms of the prayer in the plaint had not been granted by the Court on the application, but the Court had only made an interlocutory order fixing a date for inquiry. The defendant had not been enjoined from doing anything until the hearing and decision of the application for an interim injunction. Hence, no enjoining order or an interim injunction restraining the petitioner from entering into occupation of premises No. 68A was in operation at the material time of the inquiry by the Magistrate which inhibited the exercise of his powers under sections 62 and 63. The Magistrate has fallen into an error in conceiving that his jurisdiction has been ousted by the proceedings taken by the respondent in the District Court subsequent to the institution of the present proceedings by the Police. As stated earlier, the mere pendency of a suit in a civil Court is an irrelevant circumstance for the Magistrate to take into consideration when making an order under sections 62 and 63 of the Administration of Justice Law. His primary function is to maintain law and order. If the mere institution of a suit in a civil Court is sufficient to divest the Magistrate of his jurisdiction, the whole purpose of section 62 will be defeated. A scheming party will be enabled to play hide and seek. A person who has taken forcible possession, realising that the decision of the Magistrate would go against him, may rush to a Civil Court to stall for time and in the meanwhile continue to be in unlawful possession of the premises. The law cannot countenance any such action which is calculated to render nugatory the proceedings before the Magistrate. A party, by merely instituting a civil proceeding, cannot hamstring the Magistrate from proceeding with the inquiry under section 62. Such confrontation does not justify the Magistrate abdicating his functions under section 62. Of course, if the civil Court has already given a decision, final or interim, prior to the Magistrate making his order under section 63, to that extent as the dispute between the parties is decided by a competent Court, the Magistrate would be justified in making his order on the basis of such decision. But, in the absence of such a decision, the Magistrate's jurisdiction to make an order

under section 63 is not affected. Correspondingly, a civil Court, before making any decision in the shape of an interim order on the dispute, will have regard to the proceedings pending in the Magistrate's Court under section 62 of the Administration of Justice Law and will, unless there are special circumstances, refrain from proceeding to make an interim decision if proceedings under section 62 are pending in the Magistrate's Court. If the Magistrate has already made an order under section 63 of the Administration of Justice Law, in my view, the civil Court will not have jurisdiction to make any interim order which will in any way prejudice the right of a party who has succeeded in getting an order in his favour under section 63 of the Administration of Justice Law. For, in terms of section 63(2) and (6), the successful party will be entitled to be in possession until he is ejected therefrom under a judgment, order, or decree of a competent Court, and all disturbance of such possession, otherwise than by a judgment, order, or decree of a competent Court, is prohibited. Similarly, under section 63(6), the right of a successful party can be deprived of only by virtue of a judgment of a competent Court, and all disturbance or interference with the exercise of such right is prohibited other than by the authority or judgment of a competent Court. "Injunctions are not granted directing something to be done, but that something should not be done."—*Thamotherampillai v. Arumugam* (29 N.L.R. 406 at 409 & 10). A Court has no power (by way of an interim injunction) to remove a defendant who is already in possession of the subject matter of the action on the strength of an order made by a Magistrate under section 63 and to place the plaintiff in possession pending the result of the action.—vide *Pounds v. Ganegama* (40 N.L.R. 73). The eviction referred to in section 63(2) and deprivation of the right referred to in section 63(6) cannot be achieved by any interim injunction or by any other interim order emanating from a civil Court. The order made under section 63 endures until it is superseded by a final order or judgment of a competent Court.

The inquiry under section 62 is directed to the determination as to who was in actual possession of the land or part in dispute on the date of the issue of the notice under section 62(1), irrespective of the rights of the parties or their title to the said land or part. The Magistrate, acting under section 62, is not deciding the rights of parties. The proviso to section 63(7) postulates the determination being made without reference to the merits of the claims of the persons to the possession of the land or part in dispute. The Magistrate is concerned only with finding who was in actual possession on that date and with maintaining the status quo. On his reaching that finding, he may, unless the facts fall within the provisions of section

63(3), make an order under section 63(2) declaring the persons so found to be in possession on the date of the notice to be entitled to possession of the land. Such an order should be based on his prior determination in terms of section 63(1). The provisions of section 63(3) and (4) apply to a case where, though one party is found to have been in possession of the land or part in dispute on the date of the issue of the notice some other party who is found to have been in possession of the land or part in dispute had been forcibly dispossessed within a period of two months immediately before the date of issue of the notice under section 62(1); in which event, the party so found to have been forcibly dispossessed may be ordered to be restored to possession of the land or part in dispute. The party in possession on the relevant date, but who had come into such possession by forcibly dispossessing the other party, may prove that such dispossession took place more than two months next preceding the date of the notice, and in that case the Magistrate cannot make an order under section 63(4). On the other hand, if he is satisfied that forcible dispossession had taken place within the said two months, he may make an order under section 63(4) directing the party so dispossessed to be restored to possession in terms of section 63(4).

Counsel for the respondent submitted that a report of the Police is not sufficient to justify the Magistrate taking proceedings under section 62. It is essential for the assumption of jurisdiction under section 62 that the Magistrate should have reason to believe from a Police report or other information that a dispute relating to land, which is likely to cause a breach of the peace, exists. The report or other information should contain sufficient material to enable the Magistrate to form the belief that the dispute is likely to cause a breach of the peace. The jurisdiction conferred on a Magistrate to institute an inquiry under this section can be exercised only when the dispute is such that it is likely to cause a breach of the peace. It is the apprehension of a breach of the peace, and not any infringement of private rights or dispossession of any of the parties, which determines the jurisdiction of the Magistrate. It is sufficient for a Magistrate to exercise the powers under this section if he is satisfied on the material on record that there is a present fear that there will be a breach of the peace stemming from the dispute unless proceedings are taken under the section. Power is conferred by section 62 in subjective terms—the Magistrate, being the competent authority, is entitled to act when he has reason to believe that the existence of a dispute affecting land is likely to cause a breach of the peace. The condition precedent to the exercise of the power is the formation of such opinion—the factual basis of the opinion

being the information furnished by any Police officer or otherwise. A Magistrate is not bound to take action on a Police report or upon an expression of opinion by the Police. But, before he takes action, he should have a statement of facts before him so that he may exercise his own judgment in arriving at a conclusion as to the necessity of taking action under this section. The question whether, upon the material placed before him, proceedings should be instituted under this section is one entirely within the Magistrate's discretion. He may form his opinion on any information received. In my view, he can base his action on a complaint filed by any of the parties, or on a Police report. The Magistrate should however proceed with great caution where there is no Police report and the only material before him are statements of interested persons.

Counsel for the respondent contended that the Magistrate had no jurisdiction to proceed under section 62 as the dispute between the petitioner and the respondent did not affect 'land'. According to him, the subject of dispute should be bare land and not a building or any other structure erected on the land. In the present case, the dispute relates to the possession of business premises in 4th Cross Street, Pettah. Counsel referred to section 62 (4) which reads as follows :—

“ In this section, 'dispute affecting land' includes any dispute as to the right to the possession or to the boundaries of any land or part of a land, or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land or part of a land, or as to any right in the nature of a servitude affecting the land.”

This is an interpretation clause. The use of the word 'includes' is significant. Where the word defined is declared to 'mean' so and so, the definition is explanatory and prima facie restrictive; where the word defined is stated to 'include' so and so, the definition is extensive. “ 'Include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, and when it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.”— per *Lord Watson Dilworth v. Commissioner of Stamps* (1899—A.C. 105 & 106), An interpretation clause which extends the meaning of a word does not take away its ordinary meaning as understood in our jurisprudence. The expression must be given its ordinary meaning and, in addition, it must, in relevant cases, be given the

special meaning which the statute says is to be included. The ordinary meaning must however harmonise with the subject of the enactment and the object which the legislature has in view. It must fall within the scope and object of the statute and must not extend to ground foreign to its intention.

Our law does not recognise ownership of a house or building apart from the land on which it stands. The building loses its independent existence and becomes part of the land on which it is constructed. The principle of *accessio* in the case of buildings is embodied in the maxims, 'Omne quod inaedificatur solo solo cedet' (All that is built on the soil belongs thereto) and 'Superficies solo cedet' (Things attached to the earth go with the immovable property). Thus, land, in its signification, means not only the surface of the ground, but also everything built on it. *Cujus est solum ejus est usque ad caelum* (He who possesses land possesses also that which is above it). On a conveyance of land, all buildings erected thereon pass with the land, even though there is no specific mention of such buildings in the deed of transfer. Thus, 'land', in our law, includes houses and buildings, and when the legislature employs the term 'land' in any statute, the word is presumed to include 'houses and buildings', unless there are words to exclude 'houses and buildings'. The language of section 62 does not repel such inclusive meaning. A breach of the peace can ensue from a dispute relating to an agricultural land as well as from a dispute relating to a house or building. There is no justification for restricting or confining the Magistrate's jurisdiction under section 62 to a dispute affecting agricultural or pastoral land only. In my view, the Magistrate's jurisdiction under section 62 extends to disputes affecting business premises and residential premises.

Accordingly, in the exercise of this Court's revisionary powers, I set aside the order of the Magistrate dated 22.6.76 and remit the case to the Magistrate's Court with the direction that he should proceed to act under section 62 and make his order under section 63 regardless of the proceedings in D.C. Colombo 1745/RE instituted by the respondent Mylvaganam. The Magistrate should proceed to inquire into the matter expeditiously and endeavour to make his order under section 63 within six weeks of the Registrar, Supreme Court, communicating the order of this Court. It is hoped that the District Court will stay its hands pending the final order of the Magistrate in this matter.

The 1st respondent will pay Rs. 420/- to the petitioner as costs of the application to this Court.

WANASUNDERA J.—I agree.

Order set aside.