

Present: Jayewardene A.J.

1924.

Application of S. E. FERNANDO for a *Mandamus* on the
Rubber Controller

*Mandamus—Application for writ of mandamus on Rubber Controller—
When does mandamus lie?—Exercise of discretion by officer.*

Where an application was made for a *mandamus* on the Rubber Controller to restore the names of two lands to the Register of Rubber Estates and to issue to the applicant monthly certificates of production, the Supreme Court refused to issue a *mandamus* as it did not appear that the Rubber Controller had not exercised his discretion, or that he had exercised it upon some wrong principle, or that he had been influenced by extraneous considerations which he ought not to have taken into account.

H. V. Perera, for applicant.

Illangakoon, C.C., for respondent.

August 25, 1924. JAYEWARDENE A.J.—

This is an application for a writ of *mandamus* on the Rubber Controller directing him to restore the names of two lands called Kekunagahawela Group and Keraketiya to the Register of Rubber Estates and to issue to the applicant monthly certificates of production from April, 1924. A rival claimant, one S. C. Fernando, has appeared claiming these certificates. As regards the land Kekunagahawela the Controller by his affidavit states that this land appears to be in the possession of S. C. Fernando to whom he is prepared to issue certificates to dispose of any rubber produced on the estate. As regards the other estate, it is said to be identical with the 19-acre block of Muttetuhena referred to in the Controller's affidavit. For the rubber produced on this estate, certificates are being sent to S. C. Fernando. The applicant in his counter affidavit states that certificates or coupon No. 1,601 M (2) were issued to him by the Rubber Controller from December, 1923, to March, 1924, for the second-named estate, and that since April this year they are being issued to S. C. Fernando. It is contended for the Controller that no writ of *mandamus* can issue in this case as he has performed his duty under the Ordinance, and has in the exercise of his discretion preferred S. C. Fernando's right to the certificate to that of the present applicant. A *mandamus* is never granted to review the exercise of a discretion or an erroneous judgment. "The decision however erroneous of the proper officer—a tribunal on a matter within his or its jurisdiction cannot be called in question by *mandamus*." Shortt on "*Mandamus*," p. 263. I

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might also refer to the case of *Rex v. Registrar of Companies*.¹ In that case an application was made for a rule on the Registrar of Joint Stock Companies to show cause why a writ of *mandamus* should not issue directed to him to retain and register the memorandum and articles of association of a certain company. The Registrar had refused to register the company as its name resembled that of another company already registered. The application was refused, as there was no ground for saying that the Registrar in exercising his discretion had come to a wrong decision, and Avory J., in the course of his judgment, said:—

“ I agree that this rule should be discharged though upon a somewhat broader ground. In my opinion this rule could only have been made absolute if the applicants had satisfied us that the duty of the Registrar under sections 8 and 15 of the Companies (Consolidation) Act, 1908, was purely ministerial. I think that the moment it is admitted that the Registrar must exercise some discretion in the registration of a company, the name of which is suggested to be either identical with that of another company already registered or so nearly resembling it as to be calculated to deceive, then in order to displace the decision of the Registrar and justify this Court in interfering by *mandamus*, it would be necessary for the applicants to show one or more of three things; either that the Registrar had not in fact exercised any discretion in the particular case, or that he had exercised it upon some wrong principle of law, or that he had been influenced by extraneous consideration which he ought not to have taken into account. I think that one of these three things at least must be made out to justify this Court in interfering by *mandamus*. ”

As was held by Bertram C.J. the Rubber Controller who has to make up the register has an inherent right to alter it from time to time as occasion arises, and if two rival claimants appear he has to choose between the two, and must exercise some discretion in doing so. Applying the principle laid down by Avory J. in the above case which seems to modify to some extent the principles laid down in the earlier authorities, it is impossible to say that in this case the Rubber Controller has not exercised his discretion, or that he had exercised it upon some wrong principle, or that he had been influenced by extraneous considerations which he ought not to have taken into account. He is prepared to issue the certificates to the person who is in possession. The applicant no doubt produced a deed of lease from the registered owner who has since died. The lease was executed by the registered owner, the wife of the applicant, a few days before her death, and it is impeached as a document

¹ (1912) 3 K. B. 23.

obtained when the wife was unable to understand the nature of the transaction and with a view to defraud her other heirs, one of whom is the rival applicant S. C. Fernando. These facts and the circumstances under which it was produced to the Controller make me suspect its validity. These observations apply to the land Kekunagawela. As regards the other land the Rubber Controller has issued the certificates to S. C. Fernando as the land was registered under his name, and the certificates were issued to the applicant's wife Dislin Fernando before her death at the request of S. C. Fernando, her brother. This is denied by the applicant who says that the certificates have been issued to him, and he gives their number. (See paragraph 6 of his counter affidavit.) Perhaps the Rubber Controller has some explanation to offer. I should like to hear his explanation of the applicant's statement before making a final order. The Controller's explanation embodied in an affidavit is now before me. He says that the 19-acre block was registered in the name of Mrs. S. Dislin Fernando, and the certificates were sent to the applicant as agent of Dislin Fernando. This explains how the certificates No. 1,061 M (2) came to be in the hands of the applicant. As in the case of the other land the Controller is issuing the certificates to S. C. Fernando who is in possession of both these lands. The Controller also points out that the issue of certificates to persons other than the possessor of a land would prevent the disposal of the rubber produced from the land in view of a rule made by the Governor and dated July 18, 1923. The applicant admits that S. C. Fernando is in possession of the lands, but he says that the latter took forcible possession of them, and that he is prosecuting him before the Police Court of Kalutara. However that may be, the Controller has acted rightly in issuing the certificates to the man in possession. He alone can make any use of them. The question who has the better right to the possession of the land is in dispute between S. E., and S. C. Fernando, and that dispute should be settled by a regular action. For the reasons given earlier in this judgment I do not think the discretion exercised by the Controller can be interfered with. The names of the lands have been re-entered in the register. I therefore refuse this application.

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Fernando**Application refused.*