BABANIS AND ANOTHER
v.
JEMA

COURT OF APPEAL
S. B. GOONEWARDENA, J. (PRESIDENT C/A)
C.A. No. 3/81
KPL 4355
SEPTEMBER 25, 1989

Agrarian Services Act, No. 58 of 1979, sections 5(6) and 5(4) – Agricultural Tribunal – Question of law – Time limit for complaint to Commissioner of Agrarian Services.

A tenant cultivator who complains of eviction from the field he was cultivating must make his notification to the Commissioner within one year from the date of eviction. The determination of the date of eviction is a question of fact and so long as the

decision is neither irrational nor perverse having regard to the evidence it is not subject to review by the Court of Appeal.

Questions of fact as decided by the Commissioner of Agrarian Services are clothed with finality and shut out from the purview of the appellate jurisdiction of the Court of Appeal. The Court of Appeal will exercise its powers of review only if it is shown that the Commissioner of Agrarian Services has erred in law or reached a conclusion on the facts which is not supported by any evidence or if it is unreasonable or perverse.

Cases referred to:

1. *Weerawardena* v. *The Associated Newspapers of Ceylon Ltd.* S.C. Appeal No. 16/83 – Minutes of 12.6.1984
2. *Danapala* v. *Premaratne de Silva* C.A. No. 291/83 – Minutes of 14.2.1989
3. *Naidu & Co.* v. *Commissioner of Income Tax* AIR 1959 S.C. 1959
4. *Mahavithane* v. *Commissioner of Inland Revenue* 64 NLR 17, 222
5. *Subasinghe* v. *Jayalath* 69 NLR 121, 126
6. *Kalawana Election Petition Appeals* Nos. 1 and 2 of 1983 S.C. Minutes of 16.5.84

APPEAL from Order of Commissioner of Agrarian Services

G.G. Mendis for respondents-appellants

Faiz Musthapha, P.C. with *M. Withanachchi* for complainant-respondent.

Cur. adv. vult.

November 02, 1989

S. B. GOONEWARDENE, J. (P/CA)

This was an application made to the Agricultural Tribunal by the Complainant-Respondent in this appeal complaining of eviction from the paddy field in question. After inquiry the Assistant Commissioner held with him that he was the tenant cultivator of the extent of paddy land in question and that he had been unlawfully evicted. This appeal is taken against that finding.

It is convenient initially to set out here the scope of an appeal from an order of the Commissioner to whom a notification has been given by one claiming to be a tenant cultivator that he has been evicted from the extent of paddy land in question. The Agrarian Services Act No. 58 of 1979 in Section 5(6) gives a right of appeal to the landlord or the person evicted as the case may be against the decision of the

Commissioner *on a question of law*. A like provision is to be found in the Industrial Disputes Act (Cap 131) at section 31D(2) which gives a restricted right of appeal again with respect to a question of law. That provision came up for interpretation in the case of *Weerawardene v. The Associated Newspapers of Ceylon Ltd.*(1) and as I pointed out in my judgment in *Danapala v. Premaratne de Silva*(2) what is stated there although with respect to a provision relating to the powers of the Court of Appeal under the Industrial Disputes Act, must apply equally to a like provision in the Agrarian Services Act. Wimalaratne, J. there, that is in S.C.Appeal No. 16/83 (with Sharvananda, J and Wanasundera, J. agreeing) stated thus:-

> "Section 31D(2) of the Industrial Disputes Act (Cap 131) provides for an appeal to the Court of Appeal only on a question of law ....
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> Upon an appeal from a judgment where both facts and law are open to appeal, the Appeal Court is bound to pronounce such judgment as in its view ought to have been pronounced by the Court from which the appeal proceeds. In the exercise of the appellate jurisidiction an appellate Court may not be disposed to take a different conclusion on questions of fact unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial Judge's conclusion.
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> On the other hand the scope of the powers of an appellate Court where a right of appeal to the Court lies only a question of law, is much more restricted. It is bound by the findings of fact unless the conclusion of fact drawn by the tribunal appealed from is not supported by any legal evidence or is not rationally possible. If such plea is established the Court may consider whether the conclusion in question is not perverse and should not therefore be set aside. Vide the judgment of Gajendragadkar J in *Naidu & Co. v. Commissioner of Income Tax* (3), cited with approval by our Supreme Court in *Mahavithane v. Commissioner of Inland Revenue* (4) and *Subasinghe v. Jayalath*(5). This principle has been reiterated and applied by us in the judgment recently delivered in the *Kalawana Election Petition Appeals Nos. 1 and 2 of 1983*(6).

> When the legislature has restricted the power of the Court of Appeal to review the decisions of the Labour Tribunal to questions of law, it obviously intended to shut out questions of fact from the purview of its appellate jurisdiction and to clothe them with finality. The Court of Appeal is bound by and therefore cannot question the correctness of a finding of fact unless it is not supported by any evidence or if it is unreasonable or perverse. Where there is evidence to support the findings of fact the decision of the Labour Tribunal is final even though the Court of Appeal might not, on the materials, have come to the same conclusion, had an appeal on the facts been competent and the Court had the power to substitute its own judgment. That Court may on an appeal under section 31D of the Industrial Disputes Act interefere with the conclusion of facts only if it was shown either that the Tribunal had erred in law or reached a conclusion on the facts which it finds that no reasonable person applying the law could have reached".

It is convenient therefore to approach the present appeal against the formulation adopted by Wimalaratne, J contained in the words cited above.

Counsel for the appellant contened at the hearing before me that there was a serious error of law committed by the Assistant Commissioner and that contention he based upon the provisions of section 5(4) of the Agrarian Services Act the relevant part of which reads thus:-

> (4) "The notification referred to in sub-section 3 (that is the notification to the Commissioner of Agrarian Services by a tenant cultivator complaining of eviction) shall be made within one year from the date of such eviction...."

Counsel pointed out that there was in the notification with which we are concerned here and which bears the date 24th June 1974 a complaint that the eviction had taken place in the Maha season of 1973. Especially because of the vagueness with which the date of eviction has been so expressed, Counsel contended that the evidence of the complainant-respondent had to be examined to determine with precision the actual point of time at which according to him he was evicted. He referred to the testimony of the complainant-respondent under cross examination which he (Counsel) contended was to the effect that eviction had taken place in

September 1972. It is possible perhaps to think that this was in fact the effect of at least part of the respondent's testimony although the matter is not without some doubt if one considers the entirety of his testimony given on that occasion. Assuming however that the complainant-respondent had unequivocally on that occasion given that testimony that he was evicted in September 1972, what then is the resulting position?

Mr. Musthapha, Counsel for the complainant-respondent on the other hand referred me to the evidence given by the latter on the 12th May 1977 before a predecessor in office of the Assistant Commissioner whose order is under scrutiny in this appeal (which evidence by agreement between the parties was adopted by the Assistant Commissioner as reflected in the record of such agreement made during the proceedings of 7th September 1981.) In the course of that evidence recorded on that date (12th May 1977) the complainant-respondent had stated that on the 18th of September 1973 his son who on his behalf had gone to the field to attend to certain activities connected with the retention of water was obstructed. Mr. Musthapha contended that this evidence finds support in some measure as to the time of eviction in document P17 which was a letter sent by the Assistant Commissioner of Agrarian Services to the present 1st Appellant in response to a complaint made by the latter dated 29th June 1973 referring to a dispute between himself and the complainant respondent relating to this field. Mr. Musthapha also referred to the testimony of the present 1st appellant that he commenced working the field after his wife purchased rights therein (which was on the 19th February 1972). Mr. Musthapha in endeavouring to meet the position taken by Mr. Mendis, Counsel for the appellants therefore argued that there was this testimony as well before the Assistant Commissioner and for the reasons given by him the Assistant Commissioner expressed his preference, as he was entitled to do, to act on the evidence favourable to the complainant respondent rather than that which appeared unfavourable to him assuming that to be the case. One of the reasons given by the Assistant Commissioner, Mr. Musthapha pointed out, was that after a passage of time spanning eight years since the eviction and the giving of his later evidence he preferred to act on the earlier testimony of the complainant respondent rather than his testimony given later and Mr. Musthapha contended here that it was well within the power and authority of the Assistant Commissioner to make the

election in the manner he did and that in the result there was a decision made by the Assistant Commissioner on a pure question of fact which was one within his exclusive jurisdiction.

I am in agreement with the submission of Mr. Musthapha that there was this earlier testimony of the complainant-respondent which tends to show that the eviction itself was within a period of one year calculated back from the date of the complaint of eviction made to the Commissioner. In that state of things it is my view that Mr. Musthapha's submission is a correct one that the Commissioner had the issue before him as to the date of eviction, an issue which he resolved in favour of the complainant-respondent upon what may, giving a description favourable to the appellants, be described as conflicting testimony. In the case of *Weerawardene v. The Associated Newspapers of Ceylon Ltd.*, (1) referred to earlier Wimalaratne, J also said thus:-

> "It may be that had the Court of Appeal being vested with the plenitudes of appellate jurisdiction both in respect to questions of law and of fact, it might have on its own perception and evaluation of the evidence come to a different conclusion and reverse the findings of the Labour Tribunal. Hamstrung as it is by the provision that its appellate jurisdiction is limited to questions of law only the Court of Appeal cannot substitute its findings of fact for that of the Tribunal and reverse it as long as it is neither irrational nor perverse having regard to the evidence before him".

I am of the view that the question before the Commissioner on this aspect of the matter which he resolved in favour of the complainant-respondent was one to which the foregoing citation has complete application, and that if I were on the basis of the submissions made by Counsel for the appellants to reverse the finding of the Assistant Commissioner, I would be substituting my findings on a question of fact the decision on which was within the exclusive province of the Assistant Commissioner. This being the question urged on behalf of the appellants which I cannot resolve in their favour, I would affirm the order of the Assistant Commissioner complained of and dismiss this appeal with costs.

Appeal dismissed.