

SIRIWARDENA¹ AND OTHERS
v.
BRIGADIER J. RODRIGO AND OTHERS

SUPREME COURT.

RANASINGHE, J., TAMBIAH, J. AND L. H. DE ALWIS, J.

S.C. APPLICATION 104/85.

JANUARY 13 AND 15, 1986.

Fundamental Rights—Fundamental Right of equality—Articles 12(1) and (2) of the Constitution—Time limit for filing application—Land Grant (Special Provisions) Law, No. 43 of 1973.

Where a land called Gallewatta vested in the Land Reform Commission had been distributed on minor leases to the petitioners and two similar lands also vested in the Land Reform Commission and situate in close proximity to Gallewatta were also similarly distributed to others and on Gallewatta later becoming state land the 1st and 2nd respondents who were the Government Agent and Assistant Government Agent took steps to re-distribute Gallewatta to others in ten-perch blocks allegedly at the instigation of the Member of Parliament the 3rd respondent to whom they were politically opposed—

Held—

- (1) The land called Gallewatte being state land the 1st and 2nd respondents could exercise powers in their official capacity under the provisions of the Land Grant (Special Provisions) Law, No. 43 of 1973.
- (2) Gallewatte being a State land was in a different category from the other two lands which were vested in the Land Reform Commission.
- (3) There was therefore no infringement of the fundamental right of equality.
- (4) An application must be filed within one month from the date of the commission of the administrative or executive act which it is alleged constitutes the infringement or imminent infringement of the Fundamental Right relied on. Where, however, a petitioner establishes he became aware of such infringement or imminent infringement only on a later date, the one month will run from that date. The petitioners had filed their application long after the expiry of one month from the date they became aware of the infringement. Hence the application was out of time.

Case referred to:

Edirisuriya v. Navaratnam and Others [1985](1) SLR 100.

APPLICATION complaining of violation of the Fundamental Right of Equality.

B. Weerakoon with Palihapitiya and D. S. Rupasinghe for petitioners.

Sarath Silva, Deputy Solicitor General for 1st and 2nd respondents.

D. S. Wijesinghe with Shantha Perera for 3rd respondent.



Cur. adv. vult.

February 10, 1986.

RANASINGHE, J.

The 1st petitioner and the other twenty-five petitioners, who are all said to have been granted Minor Leases, such as "A", under the provisions of the Land Reform Law, No. 1 of 1972, of half an acre each from and out of the land called Gallewatta, situate at Seeduwa within the Ja-ela Parliamentary electorate, have instituted these proceedings on 25.9.85 under and by virtue of the provisions of Article 17 read with Article 126 of the Constitution on the ground that certain acts of the 1st and 2nd respondents, who are the Government Agent and the Assistant Government Agent respectively of Gampaha, constitute violations of their Fundamental Rights of equality before, and the equal protection of the law guaranteed by the provisions of Articles 12(1) and (2) of the Constitution.

The case for the petitioners, as set out in the petition, briefly is: that, in or about the year 1973, the land called Gallewatta, referred to above, vested in the Land Reform Commission: that thereafter Minor Leases, as referred to above were granted to them all by the said Commission: that two other lands, called Lahuwela Rajaye Idama and Isekhenawatte, which were situate in close proximity to the said land called Gallewatta, were also distributed upon similar Minor Leases by the said Commission: that in or about June 1979 the said leases given to the petitioners were cancelled, at the instigation of the 3rd respondent, by notices similar to "C", which said notice also required the petitioners to vacate their respective allotments: that the petitioners did not quit their allotments; and, although attempts were made by the 3rd respondent to have the petitioners evicted forcibly, all such attempts proved futile: that the 1st and 2nd respondents thereafter, by notice "E", dated 23.8.82, announced that the said land Gallewatta would be distributed in blocks of 20 perches each to persons who had the qualifications set out therein: that subsequently in March 1985 by notice "D", dated 15.3.85, the said respondents made a further announcement that the said land would be so re-distributed in blocks of 10 perches each: that, despite the protests made by the petitioners, the respondents proceeded forcibly to survey the said land about the 15th August 1985 and block it into ten perch blocks: that those steps are being so taken only to have the petitioners evicted, and the political supporters of the 3rd respondent settled on the said land: that steps have already been taken, by letters "F" and "G", dated 7.6.1981 and 2.8.85 respectively, to give a political supporter of the 3rd respondent, named M. W. D. K. S. Mendis, an allotment of 1/2 acre which is more than the extent that the said notices proclaimed the others would be granted; that, although the said land Gallewatta is being so sought to be redistributed, no such steps have been taken to redistribute the lands called Lahuwela Rajaye Idama and Isekhenawatta, referred to above, and which had also been given out, at the same time as Gallewatta, upon Minor Leases: that Gallewatta has been so singled out for re-distribution because the majority of the occupants of Gallewatta, like the petitioners, are politically opposed to the 3rd respondent whilst most of the occupants of the other two lands have now become supporters of the 3rd respondent: that the reduction of the present allotments of the petitioners to ten perch blocks would destroy even the houses which the petitioners have built on their allotments: that the respondents

have, in issuing the said letters "F" and in resurveying the said land Gallewatta for the purpose of blocking out into ten perch blocks, violated the aforesaid Fundamental Rights of the petitioners.

In the written submissions filed on behalf of the petitioners the violations complained of were set out as: the breaking-up of the 1/2 acre allotments of land which each of the petitioners enjoyed, into 10 perch blocks; and the attempt to re-distribute the said ten perch blocks amongst the political supporters of the 3rd respondent within the Ja-ela electorate.

At the hearing of the application before this Court learned counsel appearing for the petitioners, however, submitted that the violation the petitioners complain of and rely on is the decision of the 1st and 2nd respondents, at the instigation of the 3rd respondent who was motivated by political reasons, to single out the said land called Gallewatta, without any reasonable grounds, from and out of the three lands—the said land called Gallewatta, and the two lands called Lahuwela Rajaye Idama and Isekhenawatte referred to earlier—for such division and re-distribution.

Learned Deputy Solicitor-General appearing for the 1st and 2nd respondents, and also learned counsel for the 3rd respondent, raised a preliminary objection to the petitioners' application being heard: that the petition has not been filed within the period of one month set out in Sub-Article (2) of Article 126 of the Constitution.

The period of one month specified in Sub-Article (2) of Article 126 of the Constitution would ordinarily begin to run from the very date the executive or administrative act, which is said to constitute the infringement, or the imminent infringement as the case may be, of the Fundamental Right relied on, was in fact committed. Where, however, a petitioner establishes that he became aware of such infringement, or the imminent infringement, not on the very day the act complained of was so committed, but only subsequently on a later date, then, in such a case, the said period of one month will be computed only from the date on which such petitioner did in fact become aware of such infringement and was in a position to take effective steps to come before this Court—vide *Edirisuriya v. Navaratnam and Others* (1),² where the earlier authorities are also referred to.

Several of the present petitioners, including the 1st petitioner, initiated proceedings before the Court of Appeal in September 1982, in application bearing number 1163/82 of the Court of Appeal against two respondents, who are the 1st and 2nd respondents in these

proceedings, to have the Order "E", which was marked P11 in those proceedings, quashed and to prohibit the said respondents from proceeding to take any action in terms of such notice. After the said respondents filed their objections, and when the matter came up for inquiry, the said petitioners withdrew their application, in view of the averment of the respondent that, if the petitioners preferred applications in response to the said notice P11, such applications would be considered by the respondents on their merits. No reference was made by the petitioners in their petition to the institution by them of such earlier application to the Court of Appeal, and to their withdrawal of such application. It was left to the Respondents to bring those proceedings to the notice of this Court.

A consideration of the affidavit, 1R2, filed by the petitioners in the aforementioned earlier application shows that they had specifically complained that the impugned action, which is also the act complained of in these proceedings as constituting the violation of the Fundamental Right guaranteed in Articles 12(1) and (2) of the Constitution, "amount to acts of cruelty and discrimination against citizens or denial of the Fundamental Rights stated in Articles 11 and 12 of the Constitution of Sri Lanka".

Learned counsel for the petitioners contended that, even though the order "E" was made in August 1982 and they became aware of it at that time, yet, the act which actually constituted the violation complained of, namely: the survey, took place only in August 1985.

Having regard to the principles set forth in the judgments of this Court, referred to earlier, it seems to me that, in view of the facts and circumstances relevant to this matter, the said period of one month should be calculated from the date the petitioners became aware of the Order "E" which itself bears the date 23rd August 1982. The affidavit 1R2, referred to above, as having been filed by the petitioners in support of their application to the Court of Appeal seeking relief against the said Order (marked P11 in those proceedings), has been affirmed to by the 1st petitioner, and several of the other petitioners, on 7.9.82. The petitioners have instituted these proceedings before this Court only on 25.9.85. Hence, even on learned counsel's own contention—that the operative date should be the date of the survey, which, as already stated, was done on 15.8.1985—the said one-month period has been exceeded.

Even though the said preliminary objection must be upheld and the application dismissed upon that ground alone, yet, I shall proceed to consider the further objection that the petitioners cannot, upon the facts and circumstances of this case, invoke the provisions of Articles 12(1) and (2) at all.

By the Order 1R1, dated 17.5.1982, the aforesaid land Gallewatta, which had earlier, on 26.8.1972, vested in the Land Reform Commission under the provisions of the Land Reform Law, No. 1 of 1972, was vested in the State under and by virtue of the provisions of Sec. 2(1) Land Grant (Special Provisions) Law No. 43 of 1979. From and after the date on which the Order 1R1 was made, the aforesaid land Gallewatta became State land, whilst the other two lands, Lahuwela Rajaye Idama and Isekhenawatta, referred to earlier as having been, along with the aforesaid land called Gallewatta, vested in the Land Reform Commission, continued to be vested in the Land Reform Commission. After the said land called Gallewatta vested in the State it became land in respect of which the 1st and 2nd respondents could exercise powers in their official capacity, under the provisions of the Land Grant (Special Provisions) Law No. 43 of 1979. Once the said Order 1R1 came into operation the aforesaid land called Gallewatta fell into a different category of land; and it could not thereafter be treated as being in the same category as, and similar to the other two lands, Lahuwela Rajaye Idama and Isekhenawatta. The discrimination, if at all, in the treatment of the three said lands took place on the occasion 1R1 was made, when the said land called Gallewatta was singled out for vesting in the State whilst leaving the other two lands still vested in the Land Reform Commission. There is no evidence of any steps having been taken by the petitioners to challenge the validity of the said Order 1R1.

The petitioners have also wholly failed to prove any improper conduct on the part of the 1st and 2nd respondents. The material placed before this Court, in my opinion, clearly establishes that the 1st and 2nd respondents have, far from being dictated to by the 3rd respondent, resisted succumbing to any outside pressure, and have acted on their own.

For these reasons, the petitioners' application is dismissed, but without costs.

TAMBIAH, J. – I agree.

L. H. DE ALWIS, J. – I agree.

Application dismissed.