

**PREMATILAKA
V.
KULARATNE AND OTHERS**

**COURT OF APPEAL.
JAYASURIYA, J.
CA 108/95.
NOVEMBER 29,1995.**

Agrarian Services Act No. 58 of 1979 amended by Act 2 of 1991 - S. 12 (A) (5). - Transfer of Paddy field - Notice of intended sale to Ande Cultivator - Agrarian Services Agricultural Committee - Necessity- Validity- Declaration by Commissioner - Proof- Evidence Ordinance Section 3,95-falsa Demonstratio Non Nocet Cum de Corpore Constat - Prima facie evidence.

The predecessor in title of the Petitioner transferred the paddy field in favour of the Petitioner. The 2nd Respondent was the Ande Cultivator. No Notice of the intended sale was given either to the Ande Cultivator or to the Agrarian Services Agricultural Committee. The Asst: Commissioner held that the aforesaid transfer has not been executed in terms of section 12A - Act 2 of 1991.

It was contended that the Assistant Commissioner has no jurisdiction to declare that such a transfer is in violation of section 12A and is null and void, such a declaration in relation to the proprietary rights of the citizen is a matter falling within the jurisdiction exclusively conferred on the District Court.

Held :

(i) The preamble to the Agrarian Services Act sets out that it is an act to provide security of tenure for tenant cultivators of paddy lands, to provide for the establishment of Agrarian Services Committees and to confer and impose powers of supervision to be exercised by the Commissioner over

such committee, and provide for the determination of tenural and other disputes relating to agricultural land by the Commissioner.

Section 12(A) - imposed a duty on the landlord where there is a tenant cultivator to communicate his intention to sell, together with the price to the tenant cultivator.

A copy of such communication is required to be sent to the Agrarian Services Committee by Registered Post.

Section 12A (2) requires a tenant desirous of purchasing such an extent to indicate his willingness to the Committee; where the price demanded is excessive.

The Committee in consultation with the landlord is then required to determine a reasonable price and fix a period for the transfer.

Section 12(A) (5) provides that a transfer in contravention of section 12(A) is null and void.

Having regard to the preamble to the provisions of the Act and with particular reference to section 12A, by necessary implication power and jurisdiction to declare that an impugned transfer has been effected in contravention of section 12 is a power and jurisdiction which has been conferred on the Commissioner and the District Court has no jurisdiction over the operation and application of section 12A.

The provisions of the Agrarian Services Act take away the jurisdiction of the courts by necessary implication on a parity of reasoning.

AN APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Gabriel Perera vs Agnes Perera*, 43 CLW 82
2. *Yapa vs Dissanayake Sedara* - 1989 - 1 SLR 362
3. *Henderick Appuhamy vs John Appuhamy*, 69 NLR 29
4. *Holdsack vs Shore* 1950 1 KB 708

S.C.B. Walgampaya with *W.M.Jayantha* for Petitioner.

E.M.Nanayakkara for Respondent.

November 29, 1995.
F.N.D. JAYASURIYA, J.

Learned Counsel for the Petitioner who is seeking the issue of a mandate in the nature of a Writ of Certiorari and Prohibition urged that there is uncertainty as regards the corpus of the paddy field in respect of which the second Respondent is a tenant cultivator. I reject that contention. The evidence of K.P. Gunadasa is quite clear and specific on this issue. He has stated that this paddy field which has a total extent of 20 lahas consists of three lots. First lot, which is an extent of 8 lahas, is cultivated by an ande cultivator by the name of Jayasekera. The second lot, which is an extent of 6 lahas, has been cultivated by N.P. Wilson and the remaining lot which is in extent of 6 lahas, which has been cultivated by the second Respondent as the ande cultivator. It is correct that in the evidence of Wadiya Godagedara Dharmachari the predecessor in title to the present Petitioner, he has referred to the lot cultivated by the ande cultivator of Gunadasa as an extent of 8 lahas but thereafter he has corrected himself and said that he had transferred the lot cultivated by Gunadasa's Ande cultivator, which is in extent 6 lahas to the present Petitioner. In these circumstances this Court applies the principle - *falsa demonstratio non nocet cum de corpore constat* - which principle is recognized in section 95 of the Evidence Ordinance. Vide the decision in *Gabriel Perera v. Agnes Perera*⁽¹⁾ and *Yapa v. Dissanayake Sedara*⁽²⁾. In the circumstances I hold that the first point raised is without substance and has necessarily to be rejected.

In the course of the evidence the predecessor in title of the present Petitioner has given evidence and that evidence is referred to by the Assistant Commissioner in his order. According to that testimony the predecessor in title of the Petitioner has stated before the Assistant Commissioner that the second Respondent is the Ande cultivator of the paddy field in question and that was prior to the transfer of this paddy field in favour of the Petitioner. The Petitioner's predecessor in title had not given notice of the intended sale to the Ande cultivator with a copy of the notice to the Agrarian Services Agricultural Committee of the area. That evidence has not been rebutted before the Assistant Commissioner when prima facie evidence was led and in respect of which the other party has not led rebutting evidence contradicting the

evidence led by the former. This is an additional feature upon the application and is "a matter" falling within the definition of "proof" in section 3 of the Evidence Ordinance and it would have been a misdirection if the Assistant Commissioner had not taken this matter into account, in view of the failure to rebut the evidence of witness Dharmachari before the Assistant Commissioner. The evidence given by the witness Dharmachari is an admission against the Petitioner because Dharmachari was the Petitioner's predecessor in title and the Petitioner now is the representative in interest of Dharmachari in the proceedings before the Assistant Commissioner. In view of that finding and upon a perusal of the document which was the transfer in question, the Assistant Commissioner has very correctly held that the aforesaid transfer has not been executed following the requirements set forth in section 12A of the Agrarian Services Act, as amended by Act No. 2 of 1991. Section 12A sub-section 5 sets out that the transfer by a co-owner of an extent of paddy land in contravention of the provisions of this section shall be null and void and shall render the person in occupation of such paddy field liable to be evicted in accordance with the provisions of section 6 of the Act. Learned Counsel for the Petitioner contends that the Assistant Commissioner has no jurisdiction to declare that such a transfer is in violation of the provisions of section 12A and that such a transfer is null and void. Such a declaration and an order in relation to the proprietary rights of the citizen is a matter falling within the jurisdiction exclusively conferred on the Additional District Court in terms of section 19 of the Judicature Act.

A somewhat similar contention was advanced by Learned Counsel for the Appellant who appeared before Justice Sansoni in *Hendrick Appuhamy v. John Appuhamy* ⁽³⁾ and on that occasion Justice Sansoni very diligently went through the preamble of the applicable Act and indulged in a careful consideration of the provisions of the Act and concluded that the preamble by necessary implication ousted the jurisdiction of the District Court by the enactment of the aforesaid provisions.

The preamble to the Agrarian Services Act contained a statement very similar to the preamble to the Paddy Lands Act and contained a further statement of intention on the part of the legislature which is of assistance to this Court in dealing with the points raised by the Counsel

for the Petitioner. The preamble sets out that it is an Act to provide security of tenure for tenant cultivators of paddy land, to provide for the establishment of Agrarian Services Committees and to confer and impose powers of supervision to be exercised by Commissioner of Agrarian Services over such Committee and provide for the determination of tenurial and other disputes relating to agricultural land by the Commissioner of Agrarian Services.

These statements of objects and intentions set out in the preamble are very helpful to this Court to decide on the tenability of the contention raised by learned Counsel for the Petitioner. Section 12A of the Act which imposed a duty on the landlord where there is a tenant cultivator, to communicate his intention to sell the property together with the price to the tenant cultivator. In the first instance, a copy of such communication is required to be sent by the landlord by registered post to the Agrarian Services Committee in whose area of authority such extent of paddy land is situated. Section 12A(2) required a tenant desirous of purchasing such an extent of paddy land to indicate his willingness to the aforesaid Agrarian Services Committee where the price demanded by the landlord is alleged to be excessive. The Agrarian Services Committee in consultation with the landlord is then required to determine the price which is reasonable and fix a period for the transfer. Section 12A(4) provides for the issue of the circulars by the Agrarian Services Committee. In this context, the question arises as to who has supervision over alleged acts of misconduct, on the part of officers serving on Agrarian Services Committee. Is it the Additional District Court in terms of section 19 of the Judicature Act or is it the Assistant Commissioner who is required to exercise supervisory control over Agrarian Services committees. Section 12A(5) provides that a transfer in contravention of the provisions of section 12A is null and void. I hold, having regard to the preamble to the provisions of Agrarian Services Act and with particular reference to the provisions of section 12A, that by necessary implication power and jurisdiction to declare that an impugned transfer has been effected in contravention of the provisions of section 12, is a power and jurisdiction which has been conferred on the Assistant Commissioner of Agrarian Services and that the District Court has no jurisdiction over the operation and application of section 12A. I respectfully reiterate the principles already laid down in the judgment delivered by Justice Sansoni in *Hendrick*

Appuhamy v. John Appuhamy (supra) and adopt his words and observations.

I emphasize that traditional jurisdiction of a Court could not be ousted by express language which has been referred to in the case of *Holdsack v. Shore*.⁽⁴⁾ The provisions of the Agrarian Services Act take away the jurisdiction of the Courts by necessary implication on a parity of reasoning. Justice Sansoni remarks that in the case before him the Paddy Lands Act provided the sole machinery to which a landlord must resort if he wishes to have his tenant cultivator evicted or his paddy field properly cultivated. There is no other remedy available to him to seek since this Act was passed and it has taken away the jurisdiction of the District Court by necessary implication.

In the circumstances I hold the second contention by learned Counsel for the Petitioner is unsustainable and untenable in law. I hold that the Assistant Commissioner has come to a correct finding. There is no error of law on the face of the record and no want of jurisdiction in fact. I dismiss the application with costs in a sum of Rs. 1050/- payable to the second Respondent.

Application dismissed.