

BOGAWANTALAWA PLANTATIONS LTD.
v
**MINISTER OF PUBLIC ADMINISTRATION AND
PLANTATIONS AFFAIRS AND OTHERS**

COURT OF APPEAL
SALEEM MARSOOF, P.C., J. (P/CA)
SRIPAVAN, J.,
C.A. NO. 836/2000
MAY 19, 2004

Land Reform Law Amendment 39 of 1981 – Section 27A (1), Section 27A (4), – Revesting in the Commission – Non-compliance of terms and conditions? – Absence of same – Is re-vesting in Order? Delay – Locus Standi ii – Conversion of Public Corporations or Government Business Undertakings into Public Companies Act 23 of 1987 – Section 2.

The petitioner sought to quash the order made by the 1st respondent to re-vest 3 estates in the Land Reform Commission. The 3 estates were vested in the 6th respondent – Janatha Estate Development Board (JEDB) in 1982. The

petitioner came into possession of the 3 Estates by virtue of an order made under section 2 of Act, No. 23 of 1987 in 1992 and by virtue of a Memorandum of Record entered into with the 6th respondent. The 1st respondent acting under section 27A (4) sought to revoke the earlier order made in 1982 and to re-vest the Estates in the Commission.

Held:

(i) The 1982 vesting order in favour of 6th respondent JEDB did not set out any terms and conditions with respect to the conditions for the said vesting. Nor has any evidence of any agreement or arrangement before the Commission and the 6th respondent relating to conditions for vesting has been tendered.

(ii) It cannot be said that there has been non-compliance which would justify the making of an order to re-vest the estate in the Commission.

An important pre-condition for the Minister to make an order of re-vesting does not exist.

(iii) The petitioner has explained the delay. The principles of laches have not been applied automatically or arbitrarily or in a technical manner by Courts of Equity.

(iv) The petitioner is admittedly not the owner, but in possession of the lands in question and has expended enormous sums of money for the development of the estates and hence is a person affected by the impugned order – and is therefore entitled to seek relief.

APPLICATION for Writ of *Certiorari*.

Cases referred to:

1. *Issadeen v Commissioner of National Housing and others*
2003 – 2 Sri LR 10
2. *Biso Menika v Cyril de Alwis and others*
1982 2 Sri LR 368 at 380
3. *Ramasamy v The Ceylon State Mortgage Bank*
1976 – 78 NLR 510 at 514.
4. *Rajakaruna v Minister of Finance*
1985 1 Sri LR 391 at 395
5. *Vayamba Plantations (Pvt) Ltd. v Hon. D.M. Jayaratne, Minister of Agriculture & Lands and 4 others*
CA 167/99 – CAM 12.1.2004 (distinguished)

Gomin Dayasiri with Maithri Wickremasinghe for petitioner.

A. Gnanathan, D.S.G., for respondents

May 19, 2004

SALEEM MARSOOF, P.C., J. (P/CA)

The petitioner, Bogawantalawa Plantation Ltd., has invoked the writ jurisdiction of this Court with a view of having the order made by the 1st respondent dated 21.10.99 and published in the Gazette Extraordinary bearing No. 1106/39 dated 19.11.99 marked P7, quashed in so far as it relates to the properties named Udabage Estate, Udapola Estate and Iluktenna Estate. The petitioner came into possession of these estates by virtue of the order dated 22.6.92 published in the Gazette Extraordinary dated 22.6.92 and marked P1, made under section 2 of the Conversion of Public Corporations or Government Business Undertakings into Public Companies Act, No. 23 of 1987, and by virtue of the Memorandum of Record marked P4 entered into between the petitioner and the 6th respondent, the Janatha Estate Development Board. The latter has also executed the Power of Attorney marked P5 in favour of the petitioner.

The petitioner in his petition contends that the Order marked P7 which has purportedly been made by the relevant Minister under section 27A (4) of the Land Reform Law, No. 1 of 1972, as subsequently amended, is null and void as it is *ultra vires*, unreasonable and has been made in violation of rules of natural justice. However, at the hearing, learned Counsel for the petitioner placed greater reliance on the argument that the impugned order was *ultra vires* the powers of the Minister under section 27A (4) of the Land Reform Law as there has been no non-compliance with any condition relating to consideration for the vesting of the said lands in the 6th respondent.

Section 27A (1) of the Land Reform Law was introduced into the Land Reform Law in 1981 by the Land Reform (Special Provisions) Act, No. 39 of 1981. The new provision empowered the Minister, at the request of the Land Reform Commission, to vest in any State Corporation by an Order published in the Gazette, any agricultural land or estate land or any portion thereof vested in the Commission under the said Law where it is considered in the interest of the Commission to so vest, "*subject to such terms and conditions relating to consideration for the vesting of that land in*

such Corporation as may be agreed upon between the Commission and such Corporation" (*Italics added*). According to section 27A (2), any Order made under the preceding provision shall have the effect of vesting in such State Corporation specified in the Order such right, title and interest to the agricultural land or estate land or portion thereof described in that Order, as was held by the Commission on the day immediately preceding the date on which the Order takes effect. Section 27A (3) provides that by reason of such Order, all the rights and liabilities of the Commission under any subsisting contract or agreement, express or implied, which relate to such agricultural land or estate land or portion thereof, shall become the rights and liabilities of such State Corporation. It is pointed out by learned Counsel for the petitioner that the vesting order dated 15.2.1982 published in Gazette Extraordinary bearing No. 183/10 and dated 12.3.1982 marked P3 by which several estates including the estates in question were vested in the 6th respondent (Janatha Estate Development Board) did not set out any terms and conditions with respect to the consideration for the said vesting. Nor has any evidence of any agreement or arrangement between the Commission and the 6th respondent relating to consideration for vesting been tendered by any of the respondents to this application along with their Statement of Objection.

The impugned Order P7 is an order purported to have been made under section 27A(4) of the Land Reform Law, which provides that –

“Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such State Corporation by an Order under subsection (1) is not complied with, the Minister may by Order published in the gazette, revoke the Order under subsection (1) relating to that land and thereupon that land shall revert in the Commission.”

Having examined the material produced in this case by the parties, it is clear that there is absolutely no evidence of any terms or condition relating to consideration being laid down either in the order marked P3 or in any other agreement or arrangements between the parties. In the absence of any evidence of any

agreement or arrangement between the Land Reform Commission and the 6th respondent Janatha Estate Development Board relating to consideration for the initial vesting of title in the Board, this Court is unable to hold that there has been any non-compliance which could justify the making of an order to re-vest the estates in question in the Commission. In the circumstances, this Court holds that an important pre-condition for the Minister to make an order of re-vesting under section 27(a)(4) of the Land Reform Law does not exist, and the order P7 is clearly *ultra vires*. 80

The learned Deputy Solicitor-General appearing for the respondents took up two preliminary objections to the application of the petitioner, namely: (1) that the petitioner is guilty of laches in so far as he has come to Court nearly 9 months after the impugned order marked P7, and (2) the petitioner has no *locus standi*.

In regard to laches, the learned Deputy Solicitor-General submits that the petitioner is guilty of undue and unexplained delay as these proceedings were commenced only on 23.7.2000, nearly 9 months after the impugned order P7 was published in the *Gazette*. He relied on the decisions of our courts such as *Issadeen v The Commissioner of National Housing and Others* ⁽¹⁾ holding that a prerogative writ will not be issued where there is "unjustifiable delay in applying for the remedy" (*per* Bandaranayake, J. at page 16). The Supreme Court decided in that case that the party seeking redress by way of writ was not entitled to relief by reason of his delay amounting to 6 months in the absence of any acceptable explanation to excuse the delay which had caused prejudice to the respondent. However, this Court is of the view that laches on the part of the petitioner is only one of the many factors that ought to be considered in the exercise of the discretion vested in the Court for the grant of prerogative relief. Learned Counsel for the petitioner has pointed out that the order P7 was being challenged on the basis that it is *ultra vires* the powers of the Minister, and relied on *dicta* in *Bisomenika v Cyril de Alwis and Others* ⁽²⁾ at 380 stressing that a Court may in its discretion entertain an application for redress in spite of delay on the part of the applicant, especially where the order challenged is a nullity for absolute want of jurisdiction in the authority making the order. Our courts have repeatedly pointed out that "the principles of laches have not been applied automatically or 100 110

arbitrarily or in a technical manner by Courts of Equity themselves." See, Wanasundera, J. in *Ramasamy v The Ceylon State Mortgage Bank*⁽³⁾ at 514 and G.P.S. de Silva, J. *Rajakaruna v Minister of Finance*⁽⁴⁾ at 395.

The petitioner in this case, however, has sought to explain the reasons for his apparent delay in invoking the jurisdiction of this Court. The petitioner is admittedly not the owner of the three estates and got into the possession of the estates by virtue of the order marked P1 and the Memorandum of Record dated 25.7.95 marked P4. The petitioner states that it became aware of the revesting order marked P7 only upon receipt of the letter dated 13.6.2000 marked P6 from the 4th respondent (with a copy of P7 annexed thereto) requesting the petitioner to handover the property known as Iluktenne Estate to the 4th respondent. It was after examining P7 did the petitioner realize that the Minister had made order purporting to revest the title in these three estates possessed by the petitioner, on the 2nd respondent Land Reform Commission. These facts have not been denied by the respondents, and are in the opinion of the Court sufficient to satisfy court that the petitioner is not guilty of laches. In the circumstances the preliminary objection raised on the basis of the petitioner's alleged laches has to be rejected.

In regard to the question of *locus standi*, learned Deputy Solicitor-General contends that the petitioner is not the legal owner of the lands in question and is therefore not a person interested in the said land. He relies for his submissions on the unreported judgment of this Court in *Vayamba Plantation (Pvt) Ltd. v Hon. D.M. Jayaratne. Minister of Agriculture and Lands and four others*.⁽⁵⁾ This Court finds that the petitioner, who is admittedly in possession of the lands in question and has expended enormous sums of money for the development of the estates, is a person affected by the Order P7, and is therefore entitled to seek redress from this Court by way of prerogative relief. The unreported decision cited by the Learned Deputy Solicitor General has to be confined to the four corners of the Land Acquisition Act in the context of which it was made. The said decision relates to the definition of the phrase "person interested" in the Land Acquisition Act, and has no general application.

For the foregoing reasons, the Court accordingly makes order 150
quashing the revesting order marked P7 in so far as it relates to
Udabage Estate, Udapola Estate and Iluktenna Estate. There will
be no order of costs.

SRIPAVAN, J. - I agree.

Application allowed.