

1978 Present : Rajaratnam, J. and Gunasekera, J.

THE CEYLON ESTATE STAFFS' UNION, Appellant  
and  
LAND REFORM COMMISSION, Respondent

S. C. 84/97—*Labour Tribunal Case No. 1/13921/76*

*Labour Tribunal—Termination of services of workman by Land Reform Commission—Application made by Union for relief—Vesting of Estate Lands in Commission—Power of Tribunal to give relief—Land Reform Law, No. 1 of 1972, as amended by Law No. 39 of 1975, section 42.*

*Held* : That under the provision of section 42B (5) (a) of Land Reform Law, No. 39 of 1975 the rights and liabilities of an employer in regard to a workman became the rights and liabilities of the Land Reform Commission in respect of a land that vested in the Commission under the said law. The Land Reform Commission became the legal owners as from the date of vesting and accordingly become liable from such date. Accordingly where it terminated a workman's services, a Labour Tribunal had jurisdiction to make any order against the Land Reform Commission that it is normally empowered to make in cases where a workman comes before it for relief.

Per RAJARATNAM, J. :

“The Land Reform Commission has not been exempted from making provisions for fair labour practices. It is specifically provided how compensation is payable to the previous owner. It was never the policy of the State or the Law to allow the Land Reform Commission to create conditions to deprive workmen of their work and throw them to the wolves. If there was a sale, the security of the services of the workman had to be ensured by “the employer” into which definition the Land Reform Commission definitely came in.....”

*Cur. adv. vult*

**A** PPEAL from an Order of the Labour Tribunal.

*D. C. Amerasinghe*, for the appellant.

*Ameer Ismail*, Senior State Counsel, for the respondent.

July 20, 1978. RAJARATNAM, J.

This is an appeal from the order of the Tribunal dismissing the application filed by the Ceylon Estate Staffs' Union on behalf of its member J. M. de Zoysa seeking relief in respect of the termination of his services by the Land Reform Commission. The workman was a Senior Assistant Clerk who had served a period of 19 years.

Under the Land Reform (Amendment) Law, No. 39 of 1975, which introduced special provisions relating to estate lands owned by Public Companies, “every estate land owned or possessed by a Public Company was deemed to vest in and be possessed by the Commission and managed under a statutory trust for and on behalf of the Commission by the agency houses

or organisation which, or the person who, immediately prior to the date of the vesting was responsible for the management .....

It was also provided by s. 42B (3) that it shall be the duty of such trustee managing for and on behalf of the Commission to allow the workers who were lawfully resident on the estate land to continue to so reside and continue the employment. It was also provided under s. 42B (5) (a) that subject to certain provisions the rights and liabilities of the former owner of such estate land under any contract or agreement express or implied which relates to the purposes of such estate land and which subsists on the day immediately prior to the date of such vesting and the other rights and liabilities of such owner which related to the running of such estate land which likewise subsist shall become the rights and liabilities of the Commission and the amounts required to discharge all such liabilities shall be deducted from the amount of compensation payable in respect of such estate land.

Under s. 42G, any statutory trust may be terminated at any time at the option of the Commission and unless terminated earlier such trust shall continue for a further period of one year and not beyond except with the express approval of the Minister.

Section 42H specified the purposes for which the estates so vested may be used. Inter alia it may be alienated by way of sale, exchange, rent, purchase or lease to persons for agricultural development, etc. or for a co-operative or collective farm or enterprise or village expansion or any other public purpose.

It is in the context of these legal provisions that the following facts emerge. Lellopitiya Estates vested in the Land Reform Commission by operation of Law No. 39 of 1975 on 17.10.1975. The estate was managed for and on behalf of the Land Reform Commission by the statutory trustees, i.e. Lellopitiya Estates Ltd. The workman J. M. de Zoysa was notwithstanding the vesting continued in employment by the statutory trustee, i.e. the former owners/employers, for and on behalf of the Land Reform Commission. This statutory trust was terminated on 1.2.1976 and the management was handed over to the Pelmadulla Electorate Land Reform Co-operative Society which did not offer work to the workman. His services were therefore at an end.

The Tribunal held that it was left to the discretion thereafter for the Co-operative Society to employ whatever workmen they wanted on the estate and that it cannot accept the position that the Land Reform Commission was the legal owner of these estates.

The Tribunal has misdirected itself on the definition of the term employer in the Industrial Disputes Act. It means any person who employs or on whose behalf any other person employs or any person who employs on behalf of another and includes a Corporation.

At the stage the statutory trustee employed the workman; they did so for and on behalf of the Land Reform Commission, vide s. 42B (3). The purpose of the Land Reform Law, No. 1 of 1972, was inter alia to increase productivity and employment and certainly this purpose was not to be achieved by sacrificing persons who had already been employed on estate land.

Whether the Land Reform Commission sold the land or handed over the management to the Pelmadulla Estate Co-operative Society, the rights and liabilities of the previous employers become the rights and liabilities of the Land Reform Commission under s. 42B (5) (a) on the date of the vesting. If there had been an outright sale to the co-operative society, then their conduct in not employing the workman means that they had no contract of service with the said workman, and therefore the Land Reform Commission by its act and deed of the sale virtually terminated the services of the workman who found himself without his job. It cannot be said as the Tribunal held, that the Land Reform Commission cannot be considered to be legal owners and therefore liable for termination of the services of the workman, and that "in view of the certain circumstances arising by the operation of the law of the land" the Land Reform Commission was not liable for the termination of the services of the workman. The Tribunal, in my view, gravely misdirected itself and too readily abandoned the strict principles of the labour laws of this country to leave the workman without any relief. It was possible for the Tribunal in the context of the provisions of the Land Reform Law to apply the yardstick of fairness after a full inquiry into the facts and make a just and equitable order. There is no provision in the Land Reform Law to exempt the Land Reform Commission from the liabilities of the former owner. On an examination of s. 42B (5) (a) there was a contract of service between the former owner and the workman and the owner was liable to all the obligations that flow from fair legal practices. When these liabilities which were incidental to the running of the estate were by statute transferred to the Land Reform Commission it was the responsibility of the Commission to fulfil the obligations to the workman which the labour laws demanded of the previous owner.

The Land Reform Commission has not been exempted from making provisions for fair labour practices. It is specifically provided how compensation is payable to the previous owner. It was never the policy of the State or the Law to allow the Land Reform Commission to create conditions to deprive workmen of their work and throw them to the wolves. If there was a sale, the security of the services of the workmen had to be ensured by "the employer" into which definition the Land Reform Commission definitely came in and it was not allowed to the Land Reform Commission, because of the purposes for which the estate lands vested in the Commission may be used under s. 42H (1), to dispose of estates regardless of the rights of workmen. In this case, it appears that there was no sale and if so it is all the more reason why the co-operative society to whom the estate was handed over by the Land Reform Commission should have been tied to the condition that they continue the services of the workmen.

It is unfortunate that the Land Reform Commission in these cases had not the interest of the workmen as a foremost obligation on their part. They seem to have been regardless of their interest. The Land Reform Commission on whom the estate vested by operation of law with all the liabilities attached were in no better position than the previous owners and employers of the workman, and, as by their act, the services of the workman were terminated, they have incurred the same liabilities as any other employer and are in no privileged position enjoying any privileged position or immunity from a just and equitable order that the Tribunal may after inquiry make. The Tribunal therefore erred when they expressed sympathy towards the workman and gave immunity to the Land Reform Commission.

I therefore send the record back holding that the Land Reform Commission is by law not freed from liability to a just and equitable order that the Tribunal may make after due inquiry. The Tribunal has jurisdiction to make any order it is normally empowered to make in cases before it where the workman comes for relief on the termination of his services. The appeal is accordingly allowed with costs fixed at Rs. 105 payable by the respondent to the applicant.

*I also direct the Registrar to send the record back forthwith to the Tribunal with a direction from this Court to hear and determine this application as expeditiously as possible, and also the connected application.*

GUNASEKERA, J.—I agree.

*Appeal allowed.*