

**CHANDRA BOSE
VS.
DE ALWIS AND OTHERS**

COURT OF APPEAL,
TILAKAWARDENE, J P/CA.
ABEYRATNE. J.
CA 920/2000
FEBRUARY 24, 2003.

State Lands (Recovery of Possession) Act, No. 7 of 1979 amended by Acts Nos. 58 of 1981, 29 of 1983, 45 of 1992-Quit notice - Validity? - Land not state land? - Land vested in a private entity and not the state? - Government Quarters (Recovery of Possession) Act-Compared.

The petitioner sought to quash the quit notice sent by the 1st respondent competent authority. The petitioner is a workman employed at T Estate. The quit notice was challenged on the basis that (i) the corpus is not state land and (ii) the 1st respondent has no authority in law to issue the quit notice as the land is leased to the Horana Plantation Ltd 3rd respondent which is a private entity and the competent authority had no legal right to issue such notice.

HELD:

- (i) The claim of the petitioner is not based on any legal document, neither has he claimed that he has a valid lease of that or that it had been in any way alienated to him by way of a legal transfer, but he was simply in occupation as a trespasser.
- (2) Though this was a lease agreement between JEDB and the 3rd respondent, and that the lessee - 3rd respondent had agreed to take on lease T Estate, there is no legal basis upon which the petitioner can claim any right to occupy the said land, except that he was a trespasser upon the land.
- (3) The criteria that determines the Recovery of Possession in terms of this Act would be whether the land is a state land or not. The parties had agreed that the land is state land.
- (4) Provisions of the Government Quarters (Recovery of Possession) Act cannot be availed of in respect of the quarters occupied by the petitioner which is upon state land. The definition of Government Quarters contained in the Act is quite different to the definition of State Lands as contained in the State Lands (Recovery of Possession) Act.

Application for a Writ of Certiorari.

Case referred to :

(1) CA 1560/2000 - CAM 30.5 2002.

R. K. S. Sureshchandra for petitioner,
Harsha Soza for 2nd and 3rd respondents.

Cur.adv.vult.

May 12, 2003

SHIRANEE THILAKAWARDENE. J. (P/CA)

The Petitioner has preferred this application seeking a mandate in the nature of a Writ of Certiorari to quash the Quit Notice dated 19.06.2002 sent by the competent authority requiring the Petitioner to vacate the land occupied by the Petitioner and to hand over the possession of such land as he was in unauthorized possession of State land (marked P3). The Petitioner has admitted that he is a labourer employed at Tillicoultry Estate since 1984, and his father was also an employee of the same Estate who had subsequently retired from service. The Petitioner claims that he was in possession of an allotment of land on the Estate, a fact that is not disputed, and even though he claims that he obtained it from the former Chief Clerk of the Estate to cultivate vegetables this has been denied by the Respondents who claimed that the Chief Clerk in any event had no right to dispense State land to any party. The Petitioner challenges the aforesaid quit notice on two grounds. First he has claimed in his pleading contained in the Petition dated 28th of August 2000 that the corpus which is the subject matter in this case that is in issue to which the quit notice pertains, was not a State land and hence did not come within the provisions of the said Act. Secondly, the Petitioner claims that the 1st Respondent had no authority in law to issue P3 as a land that is vested with the 3rd Respondent and which is a private entity and therefore a quit notice in terms of the State Lands (Recovery of Possession) Act No.07 of 1979 as amended by Acts No. 58 of 1981, 29 of 1983 and 45 of 1992 was not a legal quit notice as the competent authority had no legal right to issue such notice.

During the hearing of this application parties conceded that the corpus regarding which the quit notice had been sent was indeed a State land and therefore the first basis on which the Petitioner has sought the jurisdiction of this Court is no longer tenable.

On a consideration of the second matter, that the quit notice could not in any event be sent as the estate was leased to the 3rd Respondent which is a private entity there are several matters which need to be considered.

It is not in dispute that the Estate of Tillicoultry was leased to the 3rd Respondent and gazetted on the 22nd of June 1992 (3R2). A copy of the Indenture of Lease bearing No. 172 is dated 5th of November 1993 (3R1). This Indenture of Lease was attested on the 5th of November 1993 and gazetted on the 22nd of June 1992 as adverted to above.

On the 7th of December 1998 the 2nd Respondent who was the Manager of the aforesaid Tillicoultry Estate, Lindula had required the Petitioner to hand over a portion of the land which according to the 2nd and 3rd Respondents had been occupied by him forcibly and when he had refused to comply with the same, disciplinary proceedings were instituted against him. In fact a perusal of the letter P1 sent by the 2nd Respondent, though it has been pleaded by the Petitioner, indicates that the Petitioner had been in "unauthorized cultivation" of the said land. In any event, this land had been allocated to the ex Chief Clerk from whom the Petitioner claims to have obtained the land, though no formal document was being produced by him. It appears that this Chief Clerk had been transferred to another estate and had subsequently retired from services of the Horana Plantations Limited in April, 1998, and even the Chief Clerk did not have any valid rights which he could have transferred to the Petitioner in this case. In other words the claim of the Petitioner is not on any legal document neither has he claimed that he has a valid lease or that it had been in any way alienated to him by way of any legal transfer but he was simply in occupation as a transpasser upon the land. Therefore it is clear that though there was a

lease agreement between the J. E. D. B. and the Horana Plantations that is the 1st and 3rd Respondent and that the Lessee the Horana Plantations Limited had agreed to take on lease Tillicoultry Estate, there is no legal basis upon which the Petitioner can claim any right to occupy the said land except that he was a trespasser upon the land. Even in terms of the Roman Dutch Law principles the Petitioner was merely a trespasser on the land and therefore his rights were restricted to those of a trespasser.

The next matter that has to be considered is the effect of the special law namely, State Lands (Recovery of Possession) Act No. 7 of 1979. In terms of Section 18 of this Act "State land" means land to which the state is lawfully entitled or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto, and includes land vested in or under the control of the River Valleys Development Board and the Mahaweli Development Board or any other authority charged with the function of developing state land or any local authority.'

The criterion that determines the recovery of possession in terms of this Act could be whether the land is a State land or not. In this case it is not necessary for the Respondents to establish this as all parties have considered this and conceded that the property that is in dispute which is the subject matter for which a quit notice has been sent is indeed "State land" in these circumstances, whilst the rights between the lessee and the lessor are such that admittedly under Roman Dutch law there is a *pro tanto* alienation and the same rights as the owner are available to the lessee in the enjoyment of the property leased but the *ut dominus* is subject to certain conditions which have been stipulated in the Lease Agreement. So that the enjoyment of the rights of the owner by the lessee is only those rights which has been set out in the Lease Agreement and are governed entirely by the contractual relationship between the lessee and the lessor. It is only, as far as the third party interfering with the rights of the lessee that such other rights of an owner as far as enjoyment of the property is considered and third party cannot interfere when the lessee is in

enjoyment of the rights. But as far as it is against the owner of the land, the rights of the lessee would fall short of *ut dominus*. So that the dominant principles which govern the rights of the lessee to the land are the same rights of the owner as far as enjoyment of the property is concerned which is governed in terms of the lease contract and therefore the relationship between the lessee and the lessor are entirely contractual and dependent upon the contents of the Lease Agreement aforesaid and therefore the 2nd and the 3rd Respondents have the same rights of the owner as far as the enjoyment of the properties are concerned including the Tillicoultry Estate but such rights would not extend to rights of *ut dominus* as it would be only rights within the contractual relationship, prescribed within the ambit of the Lease Agreement that could be enjoyed by the lessee. However in the context of the facts set out in this case, and in the circumstances of this case, and in terms of the special statute which was enacted as the State Lands (Recovery of Possession) Act No.07 of 1979, the only matter that is relevant and which determines the fact of ownership would be whether the property is State Land or not. Parties have conceded that the property which is the subject matter of this case is State land, it is subject to State Lands (Recovery of Possession) Act No. 07 of 1979 and the authorized party is entitled to invoke the provisions of this special law to obtain possession of such property. Therefore since the quit notice has been sent by the Consultant/ Plantation Expert, Plantation Reform Project, Plantation Management Monitoring Division, Ministry of Plantation Industries who is a Competent Authority for the purpose of the State Lands (Recovery of Possession) Act, the quit notice marked P3 is a valid notice and the Petitioner is obliged to comply with the same.

In this context it is important to note that the Petitioner has relied upon a decision given by the Court of Appeal which is contained in judgment in C. A. Application No. 1560/2000 it is to be noted that decision was related to the validity of a quit notice on the basis that the quarters occupied by the Petitioners were not government quarters in the meaning of Government Quarters (Recovery of Possession) Act and accordingly the provisions of the that Act could not be availed of in

respect of the quarters occupied by the Petitioner which is upon State land. It is clear that the definition of the government quarters contained in the Act is quite different to the definition of State lands as contained in the State Lands (Recovery of Possession) Act No. 07 of 1979 and amended by Act. No. 58 of 1981. In any event, the decision in that case related to the contracts that had been vested in the property that had been leased out to public companies and in these circumstances is not relevant to the facts in this case. Especially in view of the fact the land that is occupied by the Petitioner is a State land and the Petitioner has no rights whatsoever to challenge the quit notice that has been sent to him marked P2. Accordingly this application is dismissed with costs in a sum of Rs.5000.

ABEYRATNE. J., — I agree.

Application dismissed.
