
**PEIRIS
VS
LAND REFORM COMMISSION**

COURT OF APPEAL,
UDALAGAMA. J. (P/CA),
CA 1722/2001,
NOVEMBER 12, 2003,
DECEMBER 15, 18, 2003.

Land Reform Law No. 1 of 1972-section 24 -section 66 (iii) (d)-Land released to a charitable trust-Subsequent decision to reacquire-Validity?-Is a charitable trust exempted from the scope of the Land Reform Law ?

The petitioner sought to quash the decision of the respondent to re-acquire the land which was given to a charitable trust. It was contended by the respondent that, the land was vested in the Land Reform Commission (LRC), and it was divested under Section 24 in favour of the Trust and as it had not been utilized for the purpose of the trust the Commission was compelled to re-vest the land.

HELD:

- (1) A charitable trust is exempted from the scope of the Land Reform Law and in the absence of a legal right on the part of the L R C to divest or for that matter a power to revert an extent of land exempted from the provisions of the Land Reform Law, the Commission had no right to repossess the property.
- (2) The land was not alienated by the LRC to the charitable trust but in fact the land vested in the trust by the operation of law and the land belonged the charitable trust.

APPLICATION for a Writ of Certiorari/Prohibition.

A. R. Surendran with K. V. S. Ganesharajan for petitioner.

C. Witharana for 1-4 respondents.

Bimba Tilakaratne DSG for 5-7 respondents.

Cur. adv. vult.

February 11, 2004,

UDALAGAMA. J. (P/CA)

The petitioner, a Trustee of "the Peiris Charitable First Trust" as appearing in document P1, the Trust deed, purportedly held in trust the property morefully described in the aforesaid document P1 called and known as Lihiriyagama Group in the district of Kurunegala.

Admittedly, the said land the subject matter of this application was exempted from the provisions of section 66 (iii) (d) of the Land Reform Law No. 01 of 1972. It is apparent that by document P5 dated 24.11.1980 the Land Reform Commission had released an extent of 141 acres of the aforesaid estate to the Peiris Charitable First Trust referred to above.

Also admittedly in or about October 2001 vide the contents of documents P10 and P11 the 6th respondent on behalf of the Land Reform Commission informed the Petitioner that the former proposes to re-acquire the aforesaid Lihiriyagama group to be distributed among the Janawasa employees with further instructions to the Petitioner to handover the said extent to the Director of the Land Reform Commission of Kurunegala.

The petitioner alleging political interference and *mala fides* morefully described in paragraphs 9, 10 and 11 by this application *inter alia* seeks a writ in the nature of Certiorari to quash the decision contained in P10 and P11 aforesaid and a writ in the nature of prohibition to restrain the 1-6 respondents from implementing the aforesaid impugned decision. A writ of prohibition is a remedy similar to Certiorari

the only divergence being in respect of the stage of issue whereby while prohibition is issued before a final order Certiorari would issue in respect of a final order.

It is the submission of the learned Counsel for the respondents that the land divested under the provisions of section 24 of the Land Reform Law subject to terms had not been utilized for the purpose of the Trust and that the Petitioner *inter alia* failed to submit accounts of the affairs of the Trust and that the Commission was therefore compelled to revest the land in the Land Reform Commission consequent to reports submitted to the Commission by an investigation Board (R3 and R4).

Having heard submissions of learned Counsel and having perused the written submissions of parties, I am inclined to the belief that apart from the fact that a Charitable Trust is in any event exempted from the scope of the Land Reform Law and in the absence of a legal right on the part of the Land Reform Commission to divest or for that matter a power to revest an extent of land exempted from the provisions of the Land Reform Law, I would hold that the Commission had no right to repossess the property, the subject matter of this application.

The submission of the learned Counsel for the respondents that the latter had the right and the power to revest the land in terms of section 24 of the Land Reform Law in my view needs to be rejected as the land in question was not in any event alienated by the Land Reform Commission to the Peiris Charitable Trust but in fact the land vested in the latter Institution by the operation of law and the land belonged to the Charitable First Trust. To reiterate, the land stood released to the Charitable Trust by law and as stated above was outside the scope of the Land Reform Law.

Accordingly I would hold that the decision in P10 and P11 are *ultra vires* the provisions of the Land Reform Law.

The fact that a decision for the purported revestment occurred close to the Presidential election specifically to satisfy an election

pledge as submitted by the petitioner appears to have credence when considering the time of the issue of P10 and P11 admittedly subsequent to the Presidential election held in December 1999.

On a consideration of the submissions and pleadings before this court I am inclined to the view that the authors of P10 and P11 clearly acted without jurisdiction and/or with an excess of jurisdiction, entitling the petitioner to the relief prayed for in the nature of Certiorari.

Accordingly this court would quash the decision contained in P10 and P 11 by a writ of Certiorari.

Application allowed.
