

ABEYRATNE
v.
JAYARATNE, MINISTER OF LANDS

COURT OF APPEAL
JAYASINGHE, J. AND
AMARATUNGA, J.
CA NO. 665/99
AUGUST 01, 2001

Urban Development Projects (Special Provisions) Act, No. 2 of 1980 – S. 2 and S. 3 (a) – Order made by H.E. The President – Constitution – Article 140 – Land Acquisition (Amendment) Act No. 8 of 1979 – S. 38 (a) and S. 39 (a) – Jurisdiction of the Court of Appeal.

Held:

- (1) The jurisdiction conferred on the Court of Appeal by Article 140 is exercised by the Supreme Court and not by the Court of Appeal, in relation to any particular land or any land in any area in respect of which an order under or purporting to be under s. 2 of the U.D.A. Special Provisions Act has been made by H.E. The President.

APPLICATION for a *Writ of Certiorari*.

Case referred to :

1. *Gunaratne v. Abeysinghe* – 1988 1 SLR 255.
- K. S. Tilakaratne with Upali Ponnampereuma* for petitioner.
- Tilak Marapona, PC with Ms. B. Jayasinghe* for 6th respondent.
- Ms. Farzana Jamel, SSC* for 4th respondent.

Cur. adv. vult.

September 06, 2001

JAYASINGHE, J.

The petitioner filed an application No. 939/92 for Writ of Certiorari/ Prohibition to quash the order No. 03/J/91 UDA/326 dated 21. 08. 1992 on 11. 12 1992. It appears from the petition that following the notice under section 2 of the Land Acquisition Act an order to take immediate possession of the petitioner's land in terms of the proviso to section 38 (a) has been made and published in the *Government Gazette* No. 730/22 of 04. 09. 1992. While the said acquisition proceedings were pending an order under section 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 was made by Her Excellency the President declaring that the said land was urgently required for the purpose of carrying out an urgent development project. The said order was published in *Government Gazette Extraordinary* No. 698/8 of 22. 01. 1992. The writ application referred to above was filed in the Court of Appeal after the order under section 2 of the Urban Development Projects (Special Provisions) Act had been made.

On 03. 03 1993 the petitioner moved to withdraw the application No. 939/92 with liberty to file a fresh application or to seek any other remedy in view of the fact that the order has been made by Her Excellency the President under section 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 and the application has been allowed. The present application has been filed by the petitioner on 09. 07. 1999 seeking the same reliefs he claimed in his previous application after a lapse of several years. Mr. Marapana, PC takes up a preliminary objection that this Court has no jurisdiction in view of section 4 (1) of the Urban Development Projects (Special Provisions) Act No. 2 of 1980.

Mr. Tilakaratne has taken up the position that it is common ground that the petitioner is seeking a writ or *certiorari* to quash the acquisition

published in the *Government Gazette* No. 730/22 of 04. 09. 1992 under section 38 (a) and a writ of *mandamus* seeking a divesting order in terms of section 39 (a) of the Land Acquisition (Amendment) Act No. 8 of 1979. He argues that jurisdiction is therefore vested with the Court of Appeal in terms of Article 140 of the Constitution. In support of this contention he relied on a judgment of the Supreme Court No. 2/99 between the same parties where Mark Fernando, J. has held that : ". . . claim to the return of the land on appropriate application should have been made under the amendment to the Land Acquisition Act . . ." However, we do not know the content of the petitioner's application to the Supreme Court which has been dismissed as being out of time. Presumably, the said application has been made under Urban Development Projects (Special Provisions) Act and the Court has refused the petitioner's application as being out of time in terms of section 4 (2). Since the petition it appears has sought to set aside a vesting order made under section 38 of the Land Acquisition Act the Supreme Court has made the observation that the petitioner's remedy was in terms of the amendment to the Land Acquisition Act. It seems to me that the petitioner has failed to disclose to the Supreme Court that the vesting order in terms of section 38 has been consequent to an order made under section 2 of the Special Provisions Act.

However, it is the submissions of both the learned President's Counsel and the learned Senior State Counsel that the jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution is to be exercised by the Supreme Court and not by the Court of Appeal "in relation to any particular land or any land in any area in respect of which an order under or purporting to be under section 2 of the Special Provisions Act has been made . . ."

In *Gunaratne v. Abeysinghe*⁽¹⁾ the petitioner fell into arrears of rent and the respondent the Urban Development Authority served notice on the petitioner to vacate on or before 25. 10. 1983. Urban Development Authority thus instituted proceedings in the Magistrate's Court seeking eviction of the petitioner which application was allowed.

Her Excellency the President had on 18. 09. 1983 made order under section 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 in relation to the premises in dispute and the said order was published in the *Gazette*. The petitioner after the Magistrate made the eviction order applied for a writ of *certiorari* to the Supreme Court to quash the Magistrate's order, which application was refused by the Supreme Court as being out of time. The petitioner then moved the Court of Appeal for Revision of the order of the Magistrate. This application was dismissed. The petitioner then appealed to the Supreme Court against the order of the Court of Appeal. Having regard to the provisions of Act No. 2 of 1980 Thambiah, J. observed that the only reliefs available to the petitioner were :

- (1) a claim for compensation and damages under section 3 (a).
- (2) an application for the issue of writs by the Supreme Court under section 4 (1).

The petitioner did apply for the issue of a writ of *certiorari* and urged the same ground and asked for the same reliefs as in Revision application but ruled out as being out of time. Court held that the Revisionary and writ jurisdiction of the Court of Appeal to grant reliefs in respect of the complaint of the petitioner have been removed by the provisions of 3 (a) and 4 (1) of the Act No. 2 of 1980.

In the present application an order under section 2 of the Act No. 2 of 1980 has been made by Her Excellency the President. This Court is therefore without jurisdiction.

Preliminary objection is sustained.

Application for writ is dismissed with costs.

AMARATUNGA, J. – I agree.

Application dismissed.