1969 *Present:* Samerawickrame, J.

Y. M. SULTAN, Appellant, *and* THE KACHCHERI SURVEYOR, TRINCOMALEE, Respondent

S. C. 371/68—M. C. Trincomalee, 1102

Forest Ordinance—Prosecution thereunder—Validity if object is to protect Crown land.

Where the real object of a prosecution under the Forest Ordinance is to protect Crown land, the prosecution may proceed under that Ordinance even though there is a dispute as to the Crown's title to the land.

APPEAL from a judgment of the Magistrate's Court, Trincomalee.

G. F. Sethukavalar, with *S. G. Wijesekera*, for the accused-appellant.

Lalith Rodrigo, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 20, 1969. SAMERAWICKRAME, J.—

The appellant was convicted of the offence of breaking up soil for purpose of cultivation of an extent of forest not included in a reserve or village forest in breach of certain rules made under the Forest Ordinance. Learned counsel for the appellant referred to certain unsuccessful proceedings had against the appellant earlier and submitted that the learned magistrate ought to have referred the prosecution to a civil court in that the claim made by the appellant had been the subject of a dispute and the object of the present proceedings was not therefore to protect Crown

lands but in order to obtain an expeditious decision of that claim and he relied on the case of *Weerakoon v. Ranhamy* [1]. I might have acceded to the submission made by learned counsel if not for the evidence given by the appellant himself. He said that he had been cutting and cultivating Crown land without a permit from the government. He attempted to make out that he had done so for a period of 33 years. This was not put to the prosecution witnesses. In fact, it was put to one of them that the records in the department showed that the accused had cultivated the land for a period of 25 years. I am unable to take the view that these proceedings have not been brought with the object of protecting Crown lands and, I think that this case falls not within the rule in *Weerakoon v. Ranhamy* (supra) but within the rule set out in *Wijesundera v. Karmanis Appu et al*,[2] in which Macdonell, C.J., held that where the real object of the prosecution under the Forest Ordinance is to protect Crown land the prosecution may proceed under that Ordinance even though there is a dispute as to the Crown's title to the land.

Learned counsel next submitted that the land was not forest; that though it appears to be within the wide definition of forest contained in the Forest Ordinance that that definition must be read in connection with the title to the Ordinance and its general object—vide *The Mudaliyar of Rayigam Korale v. Sinnappu.*[3] In that case the accused had cleared up forest land and planted it with coconut, jak, etc., but in certain settlement proceedings it had been held that the land was Crown land. Thereafter the accused was given the land upon condition that he was to make certain payments. On his default in making payments it was sought to proceed against him under the Forest Ordinance, on the basis that the land was land at the disposal of the Crown. The present case is quite different. The evidence is that this land falls within the Fodder reservation and reservation along the stream.

Learned counsel submitted that this was land that had been allotted under the Land Development Ordinance and that it was therefore not at the disposal of the Crown. The Kachcheri Surveyor stated under cross-examination, "These are lots that are supposed to have been allotted by the government to various allottees". Why the witness used the word "supposed" is made clear by the document D2 produced by the appellant which indicates that the allottees had all surrendered their permits and that at the time they did so the appellant was in occupation of these lands. Having regard to the evidence of the appellant it may well be that they surrendered their permits because they could not get possession as against the appellant.

I am of the view that it has not been shown that the order of the learned magistrate is wrong or that the conviction of the appellant should not be upheld. The appeal is dismissed.

Appeal dismissed.

[1] *(1921) 23 N. L. R. 33.* [2] *(1932) 2 C.L.W. 86.* [3] *(1922) 24 N. L. R. 219.*