

1968

Present : Alles, J.

KASSIM HAMEEDU LEBBE Appellant and M. SULTAN SAMOON,
Respondent

S. C. 16/1965—C. R. Trincomalee 3236

Crown land—Issue of permit for occupation of a Crown allotment—Eviction of allottee on ground of non-residence on the land—Permissibility—Procedure to be followed for issue of permits and grants—Land Development Ordinance (Cap. 464), ss. 20 to 26, 156 (k).

Where a person is given an implied undertaking by the Crown that he would be issued a permit within a reasonable time in respect of an allotment of Crown land under the Land Development Ordinance, there is no legal obligation on him to take up residence on the allotment before he is issued a permit laying down a condition that he should reside on the land within a specified period. Accordingly, if he has made improvements on the land in consequence of the implied undertaking, his prospective permit is not liable to be cancelled in favour of another person merely on the ground of non-residence on the land.

APPEAL from a judgment of the Court of Requests, Trincomalee.

C. Ranganathan, Q.C., with *S. Sharvananda*, for the defendant-appellant.

Siva Rajaratnam, for the plaintiff-respondent.

Cur. adv. vult.

February 23, 1968. ALLES, J.—

The plaintiff, a Revenue Overseer, instituted this action against the defendant, a labourer, for a declaration that he was the lawful allottee of the Crown land described as lot 30 in Final Village Plan No. 29 of one rood extent and situated at Love Lane, Uppuveli, Trincomalee; for ejectment of the defendant whom he alleged was in forcible possession of the said Lot and for damages. After trial, the learned Commissioner gave judgment in favour of the plaintiff as prayed for with costs. The present appeal of the defendant is from the Commissioner's order.

This allotment was alienated under the provisions of the Land Development Ordinance and the Regulations made thereunder. The Ordinance sets out the procedure that has to be followed for the issue of permits and grants for occupation of Crown allotments. Chapter III deals with the alienation of Crown land. Under section 20 no alienation by grant is possible except at a Land Kachcheri; sections 21 and 22 relate to the publicity that has to be given in regard to the holding of a Land Kachcheri and the manner in which applications for land are received and considered; section 23 enumerates the powers of the Government Agent in regard to the issue of permits—he may in his discretion—

- (a) select an applicant to receive a permit or grant, either immediately or on some future date;
- (b) postpone consideration of any application;
- (c) reject any application.

In selecting an applicant the Government Agent shall have special regard to applications received from persons resident in the neighbourhood of the land proposed to be alienated (section 23 (2)) and an appeal lies to the Land Commissioner from any decision of the Government Agent, who can vary the decision of the Government Agent, if in his opinion the justice of the case so requires (section 23 (3)). Under section 23 (1) the date of selection 'shall be the material date for the purpose of ascertaining whether such person is duly qualified to receive such permit or grant.' Chapter IV deals with the issue of Permits and Grants. A permit is in a prescribed form and is personal to the permit holder (sections 25 and 26). The prescribed form of the permit is set out in the Regulations and is found in Volume VII of the Subsidiary Legislation

published in 1956 (*vide* page 578). The permit shall contain certain conditions and may contain other conditions which the Government Agent is authorised to include under the provisions of the law—*vide* Regulation 3 made under section 25 (p. 580 of the Subsidiary Legislation, Vol. VII). The permit P1 issued to the plaintiff in this case contains an exhaustive list of conditions—essential and optional—and among these conditions is one that the permit holder shall within 12 months of the issue of the permit erect a dwelling house and reside on the land.

Under section 156 (11 or k) of the Ordinance regulations have been made in relation to the authentication of permits and endorsements and Regulation (1) under the section reads as follows :—

“ All permits issued under this Ordinance shall be signed by the Government Agent : Provided that the Government Agent may with the express permission of the Land Commissioner authorise in writing his Office Assistant by name to sign permits on his behalf.”

This Regulation was obviously meant to ensure that on the important question of the alienation of Crown land, the Government Agent or his duly authorised Office Assistant should be the only persons competent to issue permits. The more important matter relating to the issue of grants can only be done under the hand of the Governor-General—*vide* the prescribed Form of the Grant published at p. 580 of Vol. VII of the Subsidiary Legislation.

The facts of this case reveal that the authorities concerned have shown scant regard to the provisions of the law and in issuing the permit P1 to the plaintiff in this case the authorities do not appear to have followed the normal procedure. Indeed, in my view, the permit that the plaintiff has successfully obtained in this case is nothing less than a worthless piece of paper.

It is not disputed that the defendant was selected for alienation in respect of this particular allotment somewhere in 1956 and presumably satisfied the conditions for selection set out in Chapter III. The Government received payments as annual rents from him in respect of this Lot from 1956 to 1961. The defendant stated in evidence that after being placed in possession in 1956, he cleared the jungle, fenced it, and put up a house but that he was able to go into occupation only in June 1961 owing to certain financial difficulties. His evidence with regard to the improvement to the land is supported by the evidence of the District Revenue Officer Subramaniam who inspected the land in 1964. When the defendant went to the land in June 1961 one Rehan wife of Noor Mohamed obstructed him and he had occasion to make a complaint to the Police. This complaint has been produced as D4. The defendant stated that he put up a house in 1962 and shifted with his family to the Lot in March 1962. The plaintiff had previously been allotted Lot No. 615 but requested the Government Agent to cancel his allocation for this Lot and be given Lot No. 30 which was in the occupation of the

defendant at the time, because according to him his mother lived close to Lot No. 30. He appears to have achieved his object with consummate ease and was apparently able to impress on the authorities the necessity of living in close proximity to his mother. There was thereafter unusual activity in the Kachcheri in regard to the issue of the permit to the plaintiff—an activity which had remained dormant since the selection of the defendant in 1956. On 17.2.62, the Government Agent wrote to the Land Commissioner informing him that the defendant had not taken up residence and that he proposed to set aside the selection of the defendant, and by P3 of 2.4.62, the Land Commissioner agreed with the Government Agent's recommendation. It is not known whether P2 was written by a person who had the authority of the Government Agent to write to the Land Commissioner because Gunaratnam, the District Land Officer, merely produced the file containing this letter. On 11.4.62, the permit P1 was issued to the plaintiff signed by one Abeywickreme, who has been described by Gunaratnam as his predecessor in office. In view of Regulation (1) made under section 156 (ii) and referred to earlier, Abeywickreme had clearly no authority to issue P1 and in my view, P1 is not a valid permit under the provisions of the law which entitled the plaintiff to make any claim to the Lot.

The learned Commissioner in giving judgment for the plaintiff has been considerably influenced by the fact that the plaintiff was armed with some document in support of his claim. If he had paused to consider the permit P1 critically he could not have failed to have come to a conclusion that P1 passed no valid title. He also states that the defendant had not taken up residence on the Lot since 1956. The law does not prescribe any conditions in regard to residence on a person selected. Such conditions are only required by law when the permit is issued. Gunaratnam states that in the notice announcing the Land Kachcheri, conditions are laid down and that it was in pursuance of these conditions that applications are called for. The law contemplates the issue of the permit at the time of selection or within a short time thereafter and does not envisage a situation where the authorities after making their selection sleep over the issue for nearly six years as has been done in this case. The defendant, after being selected, was justified in assuming that the permit would be issued to him within a reasonable time particularly as the Government had accepted rent from him during all these years. It is in pursuance of an implied undertaking by the Crown that he would be issued the permit within a short time, that the defendant cleared the jungle, fenced the Lot and erected a hut. It seems contrary to all principles of natural justice that after all the work had been done by him in the reasonable expectation of receiving the permit, that the plaintiff should be placed in possession of his allotment and that the defendant should be deprived of the fruits of his labours. If the permit had been issued to the defendant containing the conditions referred to in P1, it would have been open to the authorities to cancel the permit in view of the defendant's non-residence, but having failed to issue a permit, I do

not think it is open to them to evict the defendant on that ground. The Commissioner has also stressed the fact that in D4 the defendant, when he was obstructed by Rehan, had stated that he was going into residence of his allotment 'tomorrow', when in fact he went into residence much later. It may well be that he intended to go into residence soon after he was obstructed but was unable to do so owing to extraneous reasons. In any event, I hardly think that this is an adequate reason for making a finding adverse to the defendant, particularly as there was no legal obligation on his part to go into residence before he obtained his permit. Again, the Commissioner states that Gunaratnam is an official on whose testimony he can act with confidence. It is, however, clear from Gunaratnam's evidence that he never visited the land and was only giving hearsay evidence of the defendant's activities. The only evidence of any materiality given by Gunaratnam is the unorthodox procedure adopted in his office with regard to the issue of permits. Finally the Commissioner observes that he prefers the evidence of the plaintiff to that of the defendant. The plaintiff relying on his invalid permit went to take possession of the Lot when he was obstructed by the defendant. This the defendant admits and claims that he was on the Lot as a matter of right. There is therefore no conflict in the evidence between the plaintiff and the defendant.

I am therefore of the opinion that the Commissioner has misdirected himself, both on the law and the facts and was in error in giving judgment for the plaintiff. It is difficult to resist the conclusion that the plaintiff, who had no manner of claim to this Lot spared no efforts to oust the defendant unjustifiably from this Lot. There is evidence that this allotment has considerably appreciated in value in recent times and the plaintiff was endeavouring to deprive the defendant of his possession of the Lot to which he was morally and justifiably entitled. In this endeavour I regret to state the plaintiff found in the authorities a close collaborator, I trust that, even at this late stage, the authorities will issue the permit to the defendant instead of allowing the threat of an imminent ouster to ever hang over his head. The appeal is allowed with costs both in this Court and in the Court below.

Appeal allowed.
