

1958

Present : Sansoni, J.

K. MAJEED KHAN, Petitioner, and GOVERNMENT AGENT,
EASTERN PROVINCE *et al.*, Respondents

*S. C. 71—In the matter of an Application for a Mandate in the
nature of a Writ of Mandamus*

*Irrigation Ordinance (Cap. 312)—Rules made under Section 11—Dappu—Person in
whose favour dappu should be accepted.*

Rule 13 of the rules made under section 11 of the Irrigation Ordinance for the
Kantalai Irrigation District reads as follows :—

“ In the absence of a legal document showing that another person has been
duly placed and is in actual possession of the land, the dappu should be accepted
in every case from the person who furnished the dappu for the preceding
harvest.”

Held, that acceptance of dappu in favour of a person who has already furnished
it for some years should not be refused merely on the ground that the earlier
dappus were wrongly accepted without a legal document showing that the
applicant had been duly placed in possession of the field in question.

APPPLICATION for a mandate in the nature of a writ of *Mandamus*.

H. W. Jayewardene, Q.C., with *P. Ranasinghe* and *A. C. M. Uvais*,
for petitioner.

V. Tennekoon, Crown Counsel, with *G. F. Aturupana*, Crown Counsel, for
1st, 2nd and 3rd respondents.

Siva Rajaratnam, for 4th respondent.

Cur. adv. vult.

November 12, 1958. SANSONI, J.—

The petitioner has applied for a writ of Mandamus compelling the 1st, 2nd and 3rd respondents to accept from him the dappu in respect of the paddy field called Vanniyanamadu in extent 3 acres 36 perches for the year 1958.

The petitioner rests his claim on rule 13 of the rules made under Section 11 of the Irrigation Ordinance (Cap. 312) for the Kantalai Irrigation District and published in the *Government Gazette* dated 11th May, 1957. That rule reads: "In the absence of a legal document showing that another person has been duly placed and is in actual possession of the land, the dappu should be accepted in every case from the person who furnished the dappu for the preceding harvest". The terms of the rule are quite clear and it cannot be denied that for the years 1954, 1955, 1956 and 1957 dappus in respect of this field were accepted from the petitioner. Indeed the first respondent in his affidavit has sworn that upon representations made to him by the petitioner in August 1954 he directed the Vaddai Vidanai to accept dappu from the petitioner.

The petitioner has complained that in December 1957 the first respondent ordered that future dappu in respect of the field should be accepted from the 4th respondent, notwithstanding protests lodged by the petitioner. The first respondent has explained that this order was made by him because he was satisfied that dappu had been wrongly accepted from the petitioner between the years 1954 and 1957, and his reason for being of that opinion is that the petitioner did not in 1954 or subsequently have a legal document showing that he had been duly placed in possession of the field. Apparently the first defendant has tried in December 1957 to correct what he conceived to be a wrong order made in 1954 in the petitioner's favour.

Now I think there are two objections that can be properly raised to the course which the first respondent thought he was entitled to follow in December 1957. The first objection is that even if the first respondent or his predecessor did make a wrong order in 1954 in the petitioner's favour, that is no reason why he should make another wrong order in 1957, for it is clearly a wrong order if it contravenes the plain provisions of rule 13. The second objection is that if it was a wrong order that was made in 1954 it was the duty of the 4th respondent, if he thought he was prejudiced by that order, to seek his legal remedy then. It is not open to either the first or the fourth respondent after the lapse of three or four years to put matters back where they should, perhaps, have been three or four years ago, by committing a breach of rule 13.

This dispute concerns the ownership and the right to the possession of the field in dispute between the petitioner and the fourth respondent. It is one that can only be properly decided by a duly constituted action brought by one of the parties to the dispute. I therefore do not wish to go into the merits of the dispute in this judgment. There have already been three actions in the District Court of Trincomalee but there is still, I gather, a good deal of controversy as to who possessed and should possess this field. It was urged on behalf of the first respondent that I should

not allow the present application in view of this dispute, and I was referred to the case of *Mahanayake Thero, Malwatte Vihare v. Registrar-General*¹. But the writ was refused in that case because Soertsz, J. was not convinced of the propriety of the applicant's motives, and also because he thought that if he allowed the application he would be placing the party affected in a position of great disadvantage and even of great danger. Those considerations do not apply in this case.

Another argument put forward on behalf of the first respondent was by analogy from the cases where a *mandamus* to admit, restore, or elect to an office has been refused where the office is full. But I see no resemblance between those cases and the present one. A fresh dappu is accepted in respect of each cultivation season, and there will be no difficulty in accepting dappu for the next season from the person who is entitled, under rule 13, to furnish it.

There has been a clear breach of rule 13 by the first respondent, although I have no doubt that the breach was committed with the best of motives. The rule left him no discretion as to whose dappu he should accept. Since the fourth respondent had no legal document showing that he has been duly placed and was in actual possession of the field subsequent to the years 1954 to 1957, he had no right to furnish dappu for 1958.

I therefore allow the application for a *Mandamus* and order that the 1st, 2nd and 3rd respondents should accept dappu from the petitioner in respect of the next cultivation season. The petitioner is entitled to recover his costs from the 1st and 4th respondents.

Application allowed.
