FERNANDO AND OTHERS
v.
LAND REFORM COMMISSION AND ANOTHER

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 145/94.
C.A. APPLICATION NO. 553/93.
MARCH 28, 1995.

Writ of Certiorari – Land Reform Commission – Lease of land – Jurisdiction to grant the lease.

The land which was the subject-matter of the disputed lease by the Land Reform Commission of which the appellants claimed to be the owners was identified to be a portion of a land which had vested in the Commission. The land claimed by the appellants was in fact situated outside, to the south of the vested land.

Held:

The appellants failed to establish that the Commission acted in excess of its power in leasing the land.

APPEAL from judgment of the Court of Appeal.

R. K. W. Goonesekera with *J. C. Weliamuna* for appellants.

Asoka de Silva, D.S.G. with *Kumar Paul S.C.* for 1st respondent.

K. Kanag-Iswaran, P.C. with *Dinal Philips, Harsha Cabral, M. A. Sumanthiran* and *A. Paranagama* for 2nd respondent.

Cur. adv. vult.

June 15, 1995.
KULATUNGA, J.

The 1st and 2nd appellants who are mother and son respectively together with the 3rd and 4th appellants (who also appear to be

members of the same family) unsuccessfully applied to the Court of Appeal for a writ of Prohibition prohibiting the 1st respondent (the Land Reform Commission) from leasing or otherwise alienating any portion of the land called "Tillawilawatte" other than a portion in extent 38 1/2 acres from and out of the Northern portion of Lot 2 in Preliminary Plan PU 754. Hence this appeal.

The appellants state that the total extent of the land is 238 acres and that this includes an extent of 138 1/2 acres which was owned by "Blom Family". There were two claimants to that extent namely, Oawald Thomas Blom and Orville Thomas Anthony Blom, each of them being entitled to 50 acres under the Land Reform Law. The excess land owned by them, in extent 38 1/2 acres, vested in the Commission. By a statutory determination made in terms of section 19 of the Law and published in Gazette (Extraordinary) No.165/4 dated 28.05.1975 each of them was allowed to retain an undivided 50 acres from and out of Lot 1 in Plan PU 754.

The dispute in the case arose from action taken by the 1st respondent to grant the 2nd respondent company a renewal of a lease of two contiguous allotments of land in extent 50 acres and 30A.1R.15P. respectively, which constitutes Lot 2 in Plan PU 754. The said lease was initially granted for a period of 10 years. In terms of Clause 4(c) of the lease, the lessee is entitled at its option to the renewal of the lease for a further period of 10 years upon the lessee giving three months notice in writing of its intention for a renewal. Accordingly, the 2nd respondent has on 30.03.92 applied for a renewal of the lease.

The leased land was used by the 2nd respondent for a prawn culture project.

The appellants claim to have purchased, between 1987 and 1992, undivided shares of this land totalling 40 acres. On the strength of such claim, the 2nd appellant entered the Southern portion of Lot 2 in the aforesaid plan and himself commenced prawn farming there. Consequently, on 03.04.92 the 2nd respondent instituted D.C. Marawila case No. 537/L against the 2nd appellant for ejectment and

a permanent and/or interim injunction, restraining him from interfering with the 2nd respondent's possession of the lands which had been leased to the 2nd respondent.

On 25.05.93 the Court refused an interim injunction as the defendant was in possession of a part of the land in suit. However, the Court proceeded to permit the addition of the Land Reform Commission for effectual adjudication of the questions involved in the action. That action is pending.

In the meantime, on 08.06.92 the appellants instituted D.C. Marawila case No. 543/L against the Land Reform Commission praying for an order on the defendant to release 40 acres of land on the southern side of the lands leased to the 2nd respondent, for a prohibition on the defendant leasing the said extent of 40 acres and for an interim injunction to the same effect. The appellants did not pray for a declaration of title to the said extent of land.

On 20.07.93 the Court refused the application for an interim injunction for the reason that the appellants had suppressed facts relating to the connected case No. 537/L. An application for leave to appeal against that order was refused by the Court of Appeal; whereupon the appellants withdrew the action, with liberty to file a fresh action. Immediately thereafter, on 29.07.93 they filed the writ application before the Court of Appeal complaining that the land which had been leased to the 2nd respondent is not a land which was vested in the 1st respondent; hence the 1st respondent is acting in excess of its power under the Land Reform Law in seeking to renew the lease.

The Court of Appeal held that the appellant's claim was to an undivided share of the land, the total extent of which is 238 acres; that they have failed to establish, with reference to proper metes and bounds, that they are entitled to claim an extent of 40 acres on the southern side of 80 acres leased out to the 2nd respondent; and that the matter should appropriately be determined before a Civil Court. The Court was of the view that the appellants had failed to show that their proprietary rights would be adversely affected by the lease of the land and hence dismissed the application.

Arising from the above decision, the appellants obtained special leave to appeal on three questions namely, (1) whether the petitioners have *locus standi* to apply for a writ of prohibition (2) whether the 1st respondent has the power to acquire title by prescription (3) if the above two questions are answered in favour of the appellants, whether they were entitled to the writ of prohibition sought by them.

On the 1st question, the submission of the learned Counsel for the appellants is to the effect that what is relevant is not whether the appellants had shown that their proprietary rights are adversely affected, but whether the 1st respondent would be acting in excess of its jurisdiction by leasing land not vested in it; and whether in the circumstances of this case where the appellants have shown that they do have some interest in the land, any of them can be treated as a mere busy body. Counsel submits that upon such consideration, the answer to question No.1 should be in favour of the appellants.

The 2nd question has been raised because in D.C. Case No. 543/L and in the Court of Appeal the 1st respondent is said to have admitted that the excess land vested from Blom family is only 38 1/2 acres and that the 1st respondent acquired prescriptive title to the balance land leased to the 2nd respondent. However, in opposing special leave to appeal, the Deputy Solicitor-General had submitted that the said balance land had also vested in the 1st respondent but that they were unable to trace the relevant statutory declaration. Counsel for the appellants submits that having regard to the object of the Land Reform Law, the Land Reform Commission cannot claim the power to acquire title by prescription.

It appears that the presentation of the case for the parties has led to considerable confusion. Thus it has been said that the extent of the entire land is 238 acres. The relevant averments might give the impression that the entirety of the land is depicted in Plan PU 754. However, according to the tenement list, the extent included therein is only 180A.1R.15P. This is made up of Lot 1, in extent 100 acres, given to Blom brothers, and Lot 2, 80A.1R.15P. claimed by the Land Reform Commission. The plan also shows that the boundaries of the land depicted therein were shown by the "owners" O.T.A. Blom and

B.T. Blom. In the remarks column, it is noted against Lot 1 that O.T.A. Blom and O.T. Blom were each allowed to retain an undivided 50 acres, being the maximum entitlement under the Law. Against Lot 2, it is noted that the extent of 80A.1R.15P. has vested in the Land Reform Commission from the "original owners" namely, O.T.A. Blom and O.T. Blom.

Thus according to the plan produced by the appellants themselves, *prima facie,* Blom brothers owned 180A.1A.15P. and the excess land, in extent 80A.1R.15P. vested in the 1st respondent. If the entire extent of "Tillawilawatta" is 238 acres then an extent of 58 acres lies outside the Plan PU 754. In fact, the plan shows that a part of this land, owned by Marshall Tissera, lies to the south of the plan. According to the appellants' plaint in case No. 543/L, the original owners of the land out of which the appellants claim to have acquired an undivided 40 acres were Tisseras including Marshal Tissera. This shows that the interests which the appellants claim to have acquired are interests in the said portion of "Tillawilawatta" originally owned by Tisseras and situated outside, to the south of the plan.

In the circumstances, the appellants have failed to establish that the 1st respondent has acted in excess of its power in leasing the land to the 2nd respondent. Hence the question of *locus standi* and the question as to the power of the Land Reform Commission to acquire title by prescription do not arise. Accordingly, I dismiss the appeal and affirm the judgment of the Court below. The appellants will pay the 2nd respondent a sum of Rs. 3500/- (Rupees Three Thousand Five Hundred) as costs of this appeal.

G. P. S. DE SILVA C.J. – I agree.

RAMANATHAN J. – I agree.

Appeal dismissed.