IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Owitage Meltan Perera

Upugoda,Kegalle

Petitioner-Appellant

Case No. CA (PHC) 05/2006

High Court Kegalle Case No. 1964/Revision

M.C. Kegalle Case No. 31658/03

Vs.

Deputy Commissioner of Co-operative Development,

Co-operative Development Commissioner's Office,

Western Province,

Siesta House, Galle Road,

Colpetty,

Colombo 03.

Complainant-Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Buddika Gamage for the Defendant-Petitioner-Appellant

Maithree Amarasinghe State Counsel for Plaintiff-Respondent-Respondent

Written Submissions tendered on:

Neither party tendered although the opportunity was given.

Argued on: 22.05.2018

Decided on: 29.08.2018

Janak De Silva J.

This is an appeal against the order of the learned High Court Judge of the Sabaragamuwa Province holden in Kegalle dated 22nd November 2005.

The Plaintiff-Respondent-Respondent (Respondent) filed a certificate in the Magistrates Court of Kegalle in terms of sections 59(1)(c) and 59(4) of the Co-operative Societies Law No. 5 of 1972 as amended (Law) to enforce an arbitral award made against the Defendant-Petitioner-Appellant (Appellant) for a sum of Rs. 13,74,024/72.

The Appellant filed objections to the said application and took up the following objections:

(a) The Law is not in force anymore.

(b) The Respondent did not have power to file the certificate.

After hearing parties, the learned Magistrate of Kegalle overruled the objections of the Appellant.

The Appellant filed a revision application in the High Court of the Sabaragamuwa Province holden in Kegalle which was dismissed. Hence this appeal.

The grounds urged on behalf of the Appellant must be considered after examining the scope of the proceedings in the Magistrates Court upon a certificate filed in terms of sections 59(1)(c) and 59(4) of the Law.

In this scrutiny, it is useful and indeed permissible to examine the interpretation given by Courts to similar provisions found in the repealed Co-operative Societies Ordinance. It is an established rule of interpretation that the legislature is presumed to know the law, judicial decisions and general principles of law. Bindra [*Bindra's Interpretation of Statutes*, 10th ed., page 235] states as follows:

> "The legislature must be presumed to know the course of the legislation, as well as the course of judicial decisions in the country, *a fortiorari* of the superior courts of the country. It is a well-settled rule of construction that when a statute is repealed and re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the legislature is presumed to be acquainted with the construction which courts have put upon the words, when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the legislative mind."

In *Nilamdeen v. Nanayakkara* (76 N.L.R. 169) it was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted. There is also another rule of construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute.

Section 53A (5) of the Co-operative Societies Ordinance read:

> "**The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him and in default of sufficient cause being shown, the amount shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter**..." (emphasis added)

Section 59(4) of the Law reads:

> "Where a certificate is issued to a Magistrate under paragraph (c) of subsection (1), **the Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him, and in default of sufficient cause being shown, the amount shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter** for an offence punishable with fine only or not punishable with imprisonment, and the provisions of section 291 (except paragraphs (a) and (d) of subsection (1) of that section) of the Code of Criminal Procedure Act,No.15 of 1979 shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that section, he could have made at the time of imposing such sentence..." (emphasis added)

Section 53A (7) of the Co-operative Societies Ordinance read:

> "Nothing in this section shall authorise or require a District Court or Magistrate in any proceedings thereunder to consider, examine or decide the correctness of any statement in the certificate of the Registrar."

Section 59(6) of the Law reads:

> "Nothing in this section shall authorize or require a District Court or Magistrate in any proceedings thereunder to consider, examine or decide the correctness of any statement in the certificate of the Registrar."

The Supreme Court in *Mohideen v. Assistant Commissioner of Co-operative Development, Kalmunai* (80 N.L.R. 206) was called upon to interpret Section 53A (5) of the Co-operative Societies Ordinance and Pathirana J. held that the only grounds that can be urged before the Magistrate are that –

(i) the Magistrate has no jurisdiction because the last known place of business or residence does not fall within the local jurisdiction of the Magistrate.

(ii) that he had paid the amount.

(iii) that he is not the defaulter in that he is not the person from whom the amount is due.

I am of the view that this is the correct interpretation to be adopted in interpreting section 59(4) of the Law to ascertain the scope of the procedure before the Magistrates Court.

Accordingly, I hold that the Appellant cannot take up the position before the Magistrate that the Respondent did not have the power to file the certificate. An attack on such exercise of power may be accommodated in appropriate judicial review proceedings where the vires of the act can be examined.

In any event, the attack on the validity of the Law by the Appellant is misconceived in law. The Appellant submits that after the 13th Amendment to the Constitution, the Sabaragamuwa Provincial Council enacted a Statute on Co-operative Societies, statute No. 3 of 1994, and as such the Law does not apply to the Sabaragamuwa Province.

Co-operative undertakings and the organization, registration, supervision and audit of co-operative societies within the Province is a matter coming within the Provincial Council List. In *Alawwa and 4 others v. Katugampola MPCS and another* [(1996) 2 Sri.L.R. 278] the Supreme Court held that Article 154(G)8 of the Constitution unequivocally serves to keep alive all the laws in force on matters relating to the Provincial list, when a Provincial Council is established, subject

to the specified limitations and that the article also makes it clear as to when a law in force remains suspended and inoperative (not repealed) in that Province and that is when subsequently the Provincial Council makes a statute on the same matter which is described in its long title as being inconsistent with the law in force and when that statute receives assent and so long as it is in force. The appeal brief does not contain a copy of statute No. 3 of 1994 passed by the Sabaragamuwa Provincial Council on Co-operative Societies. My own research for this statute has proved futile. In these circumstances, it is not possible to hold that the Law does not apply within the Sabaragamuwa Province.

In any event, the Appellant is a registered co-operative society under the Law (වි.1). In terms of by-law 1.3.1 of the Appellant, its area of jurisdiction is the whole island and not limited to the Sabaragamuwa Province. Accordingly, I am of the view that the learned High Court Judge was correct in concluding that the Appellant comes within the purview of the Law and that the Respondent did have authority to make the impugned application to the Magistrates Court of Kegalle in terms of sections 59(1)(c) and 59(4) of the Law.

For the forgoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the Sabaragamuwa Province holden in Kegalle dated 22nd November 2005.

I dismiss the appeal with costs fixed at Rs. 50,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal