

1955

Present: Gunasekara, J.

SOOSEY FERNANDO, Appellant, and COMMISSIONER  
FOR REGISTRATION OF INDIAN AND PAKISTANI  
RESIDENTS, Respondent

S. C. 229—*In the Matter of an Appeal under the provisions of Section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 13—Inquiry thereunder—Documents used by Commissioner as evidence—Notice to applicant necessary.*

In the inquiry into an application for citizenship by registration under the Indian and Pakistani Residents (Citizenship) Act, the Commissioner examined, apart from the documents submitted by the applicant, certain other documents, purporting to be householder's lists, that he found in the Assistant Food Controller's office. He based on what he found in those documents inferences adverse to the credibility of the applicant. The applicant's attention had not been drawn to this new evidence and he had been given no opportunity of explanation before the Commissioner made his order.

Held, that the use of the documents as evidence without notice to the applicant was contrary to the principles of natural justice and vitiated the Commissioner's order which was in large part based on that evidence.

**A**PPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

G. F. Sethukavalar, for the applicant-appellant.

V. Tennekoon, Crown Counsel, for the respondent.

*Cur. adv. vult.*

July 11, 1955. GUNASEKARA, J.—

This is an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, against an order made by a deputy commissioner refusing an application made by the appellant, an Indian resident, for the registration of himself and his wife and four minor children as citizens of Ceylon.

The application was made on the 21st June 1951. By a letter dated the 1st February 1954, the deputy commissioner notified the appellant that he would inquire, under section 13 of the Act, into the questions whether the appellant was resident in Ceylon uninterruptedly from the 1st January 1939 to the 21st June 1951, whether his wife and children were so resident during certain specified periods, and whether the appellant was possessed of an assured income. He began an investigation into these questions on the 25th February 1954. At the end of that day's proceedings he held in effect that there was *prima facie* proof of the

requirements as to the appellant's residence in Ceylon and of the possession by him of an assured income. The inquiry into the question of the residence of the appellant's wife and children was first adjourned to the 5th April and was eventually resumed on the 28th May 1954. At the close of the proceedings held on the 28th May the deputy commissioner made the following order :

“ Applicant to produce householder's schedules from 1947 to 1951. On receipt of these schedules I shall make my order. Issue letter to Dy. Food Controller of Colombo. ”

On the 2nd June 1954, he wrote to the deputy food controller of Colombo asking him to issue to the appellant certified copies of householder's schedules from 1947 to 1951 on payment of the necessary charges. On the 22nd June 1954 the appellant submitted to the deputy commissioner certified extracts from the householder's list for 1947 in respect of No. 242, Modera Street, Colombo, and from the lists for the years 1948 to 1951 in respect of No. 156/4, Barber Street, Colombo, showing that the appellant had been one of the occupants of these houses in those years and that the chief occupant of 242, Modera Street, in 1947 was his brother. The deputy commissioner then pointed out to him, by a letter of the 6th July 1954, that what he required were copies of the lists “ showing all the names appearing on the original schedules ”. The appellant thereupon submitted, on the 8th September, certified extracts from the lists for the years 1948 to 1951 in respect of No. 156/4 Barber Street. These extracts contain the names of his wife and four children. In reply to an application made by him for an extract from the list for 1947 in respect of this house he had been informed by the assistant food controller for the Colombo Municipality that these names appeared in that list but the entry had been made in pencil and he was therefore not prepared to certify its genuineness.

The deputy commissioner made his order on the 14th October 1954. It appears from this order that, apart from the documents submitted by the appellant, he examined also certain other documents, purporting to be householder's lists, that he found in the assistant food controller's office, and he bases on what he found in those documents inferences adverse to the credibility of the appellant. The latter's attention had not been drawn to this new evidence and he had been given no opportunity of explanation before the deputy commissioner made his order. The use of these documents as evidence without notice to the appellant was contrary to the principles of natural justice and vitiates the deputy commissioner's order, which is in large part based on the new evidence.

It seems to me that there must be a fresh investigation into the question relating to the residence of the appellant's wife and children that is formulated in the letter of the 1st February 1954, and both counsel agree that this should be done. I set aside so much of the deputy commissioner's order as relates to that question and I direct that it should be investigated afresh. The respondent will pay the appellant Rs. 105 as costs.

*Order partly set aside.*