

JAYAWARDENA  
v.  
MEGASURIYA AND OTHERS

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

RAMANATHAN, J. AND

PERERA, J.

S.C. APPEAL NO. 47/96

C.A. APPLICATION NO. 280/94.

JUNE 6, 1997.

*Writ of Certiorari – Paddy Lands – Agricultural Lands Law No. 42 of 1973 – Magistrate's power to make an eviction order – Section 4(2) of the Law – Order made without jurisdiction – Right of cultivator evicted by such order.*

The original petitioner sought a writ of certiorari to quash a notice dated 9.1.84 issued by an Assistant Commissioner of Agrarian Services directing him to vacate the paddy land called Inimage Kumbura and to hand over possession to Megasuriya. The petitioner claimed that at an inquiry held by an Assistant Commissioner in 1962, he was declared to be the tenant cultivator of two paddy lands, Lindagawa Kumbura and Inimage Kumbura. But he was not restored to possession of these lands. In the meantime it was reported that Inimage Kumbura was being cultivated by one Megasuriya. Consequently, on a report made under the Agricultural Lands law No. 42 of 1973 the Magistrate made order under section 4(2) of the Law directing the Fiscal to restore the petitioner to the possession of Inimage Kumbura which was done on 3.2.76. Whereupon Megasuriya made a complaint of eviction from Inimage Kumbura. On 23.09.81 an Assistant Commissioner held an inquiry into that complaint. This was followed by the impugned notice.

**Held:**

1. The order of eviction made by the Magistrate under section 4(2) of the Agricultural Lands Law was void *ab initio* as there was a total want of jurisdiction in the Court in that having regard to the proceedings had before the Assistant Commissioner in 1962, the order which was sought to be enforced through the Magistrate could not possibly relate to an eviction from Inimage Kumbura. No evidence whatsoever had been lead in regard to alleged eviction from Inimage Kumbura. The entirety of the evidence related to eviction from Lindagawa Kumbura.

2. Since the "Order" of eviction made by Court was a nullity, the Assistant Commissioner had the authority to issue the impugned notice.

**APPEAL** from judgment of the Court of Appeal.

*R. K. W. Goonsekera with Rohan Sahabandu* for the substituted – petitioner-appellant.

*N. R. M. Daluwatta, P.C. with Ms. Samantha Abeyjeewa* for the 1st respondent.

*Cur. adv. vult.*

July 24, 1997.

**G. P. S. DE SILVA, C.J.**

The original petitioner made an application for a writ of certiorari to quash the notice dated 9.1.84 issued by the Assistant Commissioner of Agrarian Services (4th respondent) directing him to vacate the paddy field called Inimage Kumbura and hand over possession to the 1st respondent on or before 10.2.84 (P7). In his petition he averred: that he was the tenant cultivator of two paddy lands known as Lindagawa Kumbura and Inimage Kumbura; that on or about 17.4.62 he was evicted from these paddy lands; that he made a complaint of eviction to the Assistant Commissioner of Agrarian Services; that an inquiry was held on 14.9.62; at the inquiry the Assistant Commissioner of Agrarian Services determined that he was the lawful tenant cultivator of both Lindagawa Kumbura and Inimage Kumbura; that an order for restoration of possession was made; that he was not restored to possession of these paddy lands and it was reported by the Cultivation Committee that the paddy land called Inimage Kumbura was being cultivated by the 1st respondent (A. G. Megasuriya); that the Assistant Commissioner of Agrarian Services noticed the 1st respondent to vacate Inimage Kumbura; that on the failure of the 1st respondent to vacate Inimage Kumbura steps were taken under the provisions of the Agricultural Lands Law No. 42 of 1973 to file a written report in the Magistrate's Court; that pursuant to the report to the Magistrate's Court an order was made by the Magistrate restoring the petitioner to the possession of Inimage Kumbura. The date of delivery of possession of Inimage Kumbura was 3.2.76; that on or about 23.9.81 the petitioner was summoned by

the 3rd respondent (Assistant Commissioner of Agrarian Services, Matale) and was questioned about the eviction of the 1st respondent (Megasuriya) from Inimage Kumbura on **3.2.76**; that an inquiry was held into the 1st respondent's complaint of eviction from Inimage Kumbura on 3.2.76; that the petitioner had explained that it was on a complaint of eviction made by him in 1962 that he was restored to possession of Inimage Kumbura pursuant to an order made by the Magistrate's court; that thereafter he received the notice P7 directing him to vacate Inimage Kumbura.

It is the case for the petitioner that the notice P7 was issued without jurisdiction inasmuch as the petitioner was restored to possession of Inimage Kumbura on 3.2.76 by virtue of an order made by the Magistrate's Court. The Fiscal, who is an officer of Court, acted on the directions of the Court and lawfully evicted the 1st respondent who was in unlawful occupation of Inimage Kumbura. The Assistant Commissioner of Agrarian Services therefore had no authority to override an order of court and direct the petitioner to vacate Inimage Kumbura.

The case for the 1st respondent is that although the original petitioner had on 18.6.62 complained of an eviction from both Lindagawa Kumbura and Inimage Kumbura, yet a scrutiny of the proceedings held before the Assistant Commissioner of Agrarian Services (consequent upon the said complaint) makes it manifest that no evidence whatsoever was lead in regard to the alleged eviction from Inimage Kumbura. The proceedings held before the Assistant Commissioner of Agrarian Services are marked as 1R4. The entirety of the evidence related to the eviction from the paddy field called Lindagawa Kumbura. It is true that a report was filed in the Magistrate's Court in respect of an alleged eviction from Inimage Kumbura and upon that report the Court had made order directing the Fiscal to deliver possession of Inimage Kumbura to the original petitioner. It is not disputed, as stated earlier, that it was consequent upon the order of court that the 1st respondent was evicted from Inimage Kumbura and possession of Inimage Kumbura was delivered to the petitioner on 3.2.76.

Mr. R. K. W. Goonesekera for the substituted petitioner-appellant (the original petitioner having died while the application was pending before the Court of Appeal) strenuously contended that in these circumstances the Assistant Commissioner of Agrarian Services had no authority whatever to issue the notice P7 directing the petitioner to vacate Inimage Kumbura. On the other hand Mr. Daluwatte for the 1st respondent strongly urged that the Magistrate's Court in directing the Fiscal to evict the 1st respondent from Inimage Kumbura acted without jurisdiction for the reason that the proceedings 1R4 were confined to the eviction of the petitioner from Lindagawa Kumbura. There was a total absence of evidence in regard to the alleged eviction from Inimage Kumbura at the inquiry before the Assistant Commissioner of Agrarian Services.

At this point it is necessary to refer briefly to the relevant provisions of the Agricultural Lands Law No. 42 of 1973. Section 3(3) provides for a tenant-cultivator to notify the Agricultural Tribunal that he has been evicted from the paddy land and the Tribunal is empowered to hold an inquiry. Section 3(4) enacts that where the "tribunal decides that the eviction had been made" the person evicted is entitled to be restored to possession of the paddy land and "the Tribunal shall in writing order that every person in occupation of such extent shall vacate it on or before such date as shall be specified in that order, and if such person fails to comply with such order, he shall be evicted from such extent in accordance with the provisions of section 4...:

Section 4(1) reads thus:

"Where any person who has been ordered under this Law by the Tribunal to vacate any extent of paddy land and to deliver possession thereof to any specified person fails to comply with such order, the Tribunal or any person authorised in that behalf by the Tribunal may present to the Magistrate's Court within whose local jurisdiction such extent wholly or mainly lies a written report specifying the nature of such order and the person to whom it was issued, describing the extent of land to which such order relates,

stating that such person has failed as required by such order to vacate or to vacate and deliver possession of such extent, praying for an order to evict such person and all other persons in occupation of such extent from such extent, and mentioning the person to whom delivery of possession of such extent should be made."

Section 4(2) is as follows:

"Where a written report is presented to a Magistrate's Court under subsection (1), such court shall direct the Fiscal or peace officer to evict forthwith the person specified in such report and all other persons in occupation of the extent of land specified in the order and to deliver possession of such extent to the person mentioned in such report as the person to whom delivery of possession of such extent should be made."

The "written report to court" is based on the evidence and the finding reached by the Tribunal after inquiry. The report to court must specify "the nature of the order" and describe the "extent of the land to which the order relates." Having regard to the nature of the evidence led at the inquiry, the "order" could not possibly relate to an alleged eviction from Inimage Kumbura. I am therefore of the opinion **that there was no foundation for the exercise of jurisdiction by the Magistrate's Court in terms of section 4(2) of the Agricultural Lands Law No. 42 of 1973.** In other words, there was a total want of jurisdiction in the court and the purported order of eviction in respect of Inimage Kumbura was void *ab initio*; it is an order which could be attacked even collaterally. Since the "order" of eviction made by court against the 1st respondent was a nullity, the Assistant Commissioner had the authority to issue the notice P7. The application for Certiorari to quash P7 cannot therefore succeed.

For these reasons the appeal fails and is dismissed, but in all the circumstances, without costs.

**RAMANATHAN, J.** – I agree.

**PERERA, J.** – I agree.

*Appeal dismissed.*