

1972

Present : Pathirana, J.

S. A. KIRIMUDIYANSE, Appellant, *and* ASSISTANT COMMISSIONER OF AGRARIAN SERVICES, Respondent

S. C. 954/71—M. C. Kegalle, 91132

Paddy Lands Act No. 1 of 1958, as amended by Act No. 11 of 1966—Sections 4(1A), 21, 51(1)(3)—Eviction of tenant cultivator—Inquiry held by Commissioner—Eviction order made by Commissioner thereafter—Persons against whom such order may be made.

Where, at an inquiry held under section 4(1A)(a) of the Paddy Lands Act, it is proved to the satisfaction of the Commissioner that a tenant cultivator has been wrongfully evicted, and the finding of the Commissioner has not been reversed by the Board of Review upon an appeal, the Commissioner is empowered by section 4 (1) (d) (ii) to order any person in occupation of the land on the owner's behalf to vacate it, although there was no finding at the inquiry held under section 4 (1A) (a) (b) that it was that same person who had evicted the tenant cultivator.

APPEAL from a judgment of the Magistrate's Court, Kegalle.

Aloy Ratnayake, with *C. Motilal Nehru*, for the accused-appellant.

M. W. Amerasinghe, State Counsel, for the Attorney-General.

Cur. adv. vult.

December 5, 1972. PATHIRANA, J.—

The appellant appeals under Section 21(3) of the Paddy Lands Act No. 1 of 1958 amended by the Paddy Lands (Amendment) Act No. 11 of 1964 against the order of the Magistrate made in terms of Section 21(2) that the appellant and all others in occupation of the paddy land called Dunukepota be evicted forthwith from such extent. This order was made consequent to an application to the Magistrate's Court by the Assistant Commissioner of Agrarian Services asking for the eviction of the appellant and all other persons in occupation of the said land and the delivery of possession thereof to be given to one P. Podiappuhamy who had been evicted from the said land. The appellant had failed to comply with the order of the Assistant Commissioner to vacate the paddy land and give possession thereof to the said Podiappuhamy. There was no appeal against the order of the Assistant Commissioner of Agrarian Services by the landlady, as such the decision of the Assistant Commissioner was final and conclusive and could not be questioned in any legal proceedings in any Court. Counsel appearing in the case concede that there was no right of appeal on the points raised in the petition of appeal in view of the Divisional Bench judgment in *Rosalin Nona v. Assistant Commissioner of Agrarian Services; Vavuniya*¹.

The learned State Counsel, however, submitted that the order of the Assistant Commissioner of Agrarian Services in this case needed rectification as the proper person had not been made a respondent to the application that was made to Court. He desired, therefore, that the case be sent back, so that the proper party may be substituted. His position was that, according to para. 6 of the affidavit filed by the Assistant Commissioner of Agrarian Services in the Magistrate's Court in his application for an order under Section 21(1) of the Paddy Lands Act, he had stated that it was proved to his satisfaction "that P. Podiappuhamy

¹ (1972) 75 N. L. R. 443.

(the tenant cultivator) had been evicted and that such eviction had been made by or at the instance of J. M. Babynona of Kumbukgama, Dewalegama". In para. 10 of the same affidavit he has, however, stated that by writing dated 23.8.67 sent by registered post to the appellant, S. A. Kirimudiyanse, he had ordered him to vacate the land on or before 30.9.67 and that he had failed to obey the aforesaid order and that P. Podiappuhamy was still out of occupation and use of the said land. Babynona is the owner of the paddy land and therefore is the landlady. His contention was that in view of the facts stated in paras. 6 and 10 of the affidavit, the eviction was by or at the instance of Babynona, therefore Babynona should be made a respondent to the application instead of the appellant Kirimudiyanse. He cited for this proposition the case of *Podiappu v. Assistant Commissioner of Agrarian Services*¹, 73 N.L.R. 225 which is a judgment of a Bench of three judges of this Court. The case was referred to a Bench of three judges to decide the important question whether the inquiry held by the Assistant Commissioner of Agrarian Services was *ultra vires* and without jurisdiction, in that he had not been appointed by the Judicial Service Commission and could not therefore exercise judicial power. The Court held that it was not necessary to decide this question as it was of the view that the matter could be disposed of on another point. In that case the cultivators Nandias and Jayasena had been evicted by one Jayawickreme who was also the person who entered into occupation immediately after the eviction of the cultivators. In terms of Section 4(7)(b) the Commissioner had in writing to order Jayawickreme that he and all other persons in occupation of the field should vacate it and if Jayawickreme failed to comply with that order, the Commissioner was empowered under Section 21(1) to institute proceedings against Jayawickreme for an order of eviction. The notice under Section 4(7)(b) had been made not on Jayawickreme but on Podiappu, the appellant, and the proceedings had also been instituted not against Jayawickreme who was in occupation of the field, but against the appellant. It was rightly held that the proceedings against the appellant and order for eviction made therein were not in accordance with the provisions of the Act and were therefore not warranted by the law.

I do not think that the Assistant Commissioner of Agrarian Services in the case before me has acted otherwise than in accordance with the principles set out in the case cited. Under Section 4(1)(1A)(a), where a tenant cultivator of a paddy land notifies the Commissioner that he had been evicted from such extent the Commissioner has to hold an inquiry. An Assistant Commissioner of Agrarian Services by virtue of Section 51(1)(3) can exercise all or any other powers of the Commissioner under the Act within the area to which he is appointed. Under Section 4(1A)(c) the landlord and the person evicted should be given an opportunity of being heard in person or through a representative at such inquiry. This has been complied with in this case.

¹ (1970) 73 N. L. R. 225.

When the Commissioner holds an inquiry under Section 4(1A)(a) the main question for decision is whether or not the tenant cultivator had been evicted. Section 4(1)(b) states that if it is proved to the satisfaction of the Commissioner that the tenant cultivator had been evicted, then it shall be presumed, until the contrary is proved, that such eviction had been made by or at the instance of the landlord of such extent. The next stage is when the Commissioner having decided that eviction had been made and no appeal is made from the decision or if there was an appeal the Board of Review had confirmed the decision, then under Section 4(d)(ii) the person evicted shall be entitled to have the use and occupation of the land restored to him. It will, therefore, be seen that Section 4(1)(b) of the Act is silent as to what consequences follow against the person or persons who evicted the tenant cultivator whether it is the landlord by virtue of the presumption under the Section or some other person or persons.

The Act thereafter provides the machinery for restoring the tenant cultivator to the use and occupation of the land. For this purpose the Commissioner is empowered under Section 4 (d) (ii) in writing to order every person in occupation of the extent to vacate it on or before such date as shall be specified in such order and if he failed to comply with such order, he shall be evicted under Section 21 which is the Section dealing with the procedure for the eviction in the Magistrate's Court within whose local jurisdiction the extent of the paddy land wholly or mainly lies.

It becomes apparent, therefore, under the Act, the person or persons in occupation under Section 4 (d) (ii) who had been ordered to vacate such extent by the order of the Commissioner need not necessarily be the person or persons who had evicted the tenant cultivator under Section 4 (1) (b) of the Act. In my opinion, the legislature very advisedly enacted Section 4 (d) (ii) in this manner, namely, that the eviction order should be in respect of every person in occupation of the land and not necessarily the person or persons who had evicted the tenant cultivator, for it is possible that if it were otherwise and the eviction order under Section 4 (d) (ii) is made against the person or persons who had evicted the tenant cultivator, the purpose of achieving the objects of the Act will be defeated, namely, to provide security of tenure to the tenant cultivator and restore the tenant cultivator to have the use and occupation of the extent. It will also leave the door open to a designing landlord to get the tenant cultivator evicted by some person or persons and after the inquiry by the Commissioner put another person or persons into occupation of the land and in consequence raise technical objections that the order cannot be enforced against the persons in occupation of the land because there had been no findings of the Commissioner that it was these same persons who had evicted the tenant cultivator at the inquiry under Section 4 (1) (a) and (b).

The appellant in this case admits in his petition of appeal that at all times he was in occupation of the land for and on behalf of the landlady Babynona.

In my opinion, the Assistant Commissioner of Agrarian Services was right in ordering the appellant under Section 4 (d) (ii) as the person in occupation to vacate the extent of the paddy land and thereafter taken proceedings against him in the Magistrate's Court under Section 21 of the Act. I hold that the proper party has been made a respondent in the Magistrate's Court proceedings. I therefore affirm the order of eviction and dismiss the appeal.

Appeal dismissed.

