

1974 Present : Perera, J., and Tittawella, J.

K. G. WIJENDRA, Appellant, and THE ASSISTANT COMMISSIONER OF AGRARIAN SERVICES, MATALE, Respondent

S. C. 793/73—M.C. Matale, 39857

*Paddy land—Question whether a tenant cultivator has been evicted by his landlord—Inquiry by Commissioner—Person in occupation of the land—No requirement that he should be informed about the inquiry—Paddy Lands Act, ss. 4 (1A) (a), 4 (1A) (c), 4 (1A) (d) (ii), 21 (1) (2), 35.*

Where a tenant cultivator of an extent of paddy land notifies the Commissioner under section 4 (1A) (a) of the Paddy Lands Act that he has been evicted from such extent, the Commissioner, when he proceeds to hold an inquiry to decide the question whether there has been such eviction, is not required by any provision of the Act to provide an opportunity to the person in occupation of the land to participate at the inquiry. If the Commissioner decides that the tenant cultivator has been wrongly evicted and if such decision (where there has been an appeal) is confirmed by the Board of Review, then only does the person in occupation receive a notice to vacate the land.

**A**PPEAL from an order of the Magistrate's Court, Matale.

S. K. Sangakkara, for the respondent-appellant.

T. Marapana, State Counsel, for the State.

*Cur. adv. vult.*

June 28, 1974. TITTAWELLA, J.—

This is an appeal from an order made under section 21 (2) of the Paddy Lands Act (hereinafter referred to as the Act) by the Magistrate of Matale directing the eviction of the appellant from an extent of paddy land lying in the Administrative District of Matale. The petition of appeal states that the appellant has been the tenant cultivator from 1957 under the landlord one D. H. Navaratne who also is said to be the owner. It further states that K. G. Simon Naide and A. G. Kira the persons who participated in the inquiry before the Assistant Commissioner of Agrarian Services, Matale (hereinafter referred to as the Commissioner) as the landlord and tenant cultivator respectively had in fact no such status. An affidavit from Navaratne in support of these facts has been annexed to the petition of appeal.

The learned Attorney for the appellant contends that the appellant, not having had an opportunity of participating at the inquiry before the Commissioner, is not bound by any consequential orders or directions. He relies on the decision in the case of *Podiappu v. Assistant Commissioner of Agrarian Services*,<sup>1</sup> (73 New Law Reports 225) and seeks to have the order of the learned Magistrate set aside. For a determination of this matter it is necessary to refer to some of the relevant facts as could be gathered from the record.

The Act had been brought into operation in the Administrative District of Matale by an Order published in Gazette No. 13179 of 22.6.1962. On 18.6.63 Kira claiming to be the tenant cultivator had notified the Commissioner under section 4 (1A) (a) of the Act that he had been evicted from this extent of paddy land. Thereupon the Commissioner had informed the landlord (Simon Naide) and after inquiry decided that Kira had been wrongly evicted. This decision was communicated in terms of section 4 (1A) (c), both to the landlord Simon Naide and to the tenant cultivator Kira. Simon Naide had preferred an appeal to the Board of Review constituted under the Act which eventually confirmed the decision of the Commissioner.

The Commissioner then, acting under section 4 (1A) (d) (ii) of the Act had on 20.1.71 directed K. G. Wijendra, the appellant as the person in occupation of the extent of paddy land to vacate it on or before the 20.2.71. The appellant having failed to do so the Commissioner presented to the Magistrate of Matale on 12.6.72 a written report in terms of section 21 (1) of the Act praying for an order to evict the appellant and all other persons in occupation of the said extent paddy land. The learned Magistrate

had on 13.6.72 made such an order in terms of section 21 (2) of the Act and gave notice of it to the appellant. This notice was issued and re-issued on several occasions and it was finally served on him on 13.1.73. On the same day the appellant filed this petition of appeal.

A scrutiny of the several steps taken by the Commissioner shows that the procedures prescribed in the Act have been carefully followed at every stage. There does not appear to be any provision in the Act requiring the Commissioner holding an inquiry, on being notified under section 4 (1A) (a) to provide an opportunity for the person in occupation of any extent of paddy land to participate at such an inquiry. If the Commissioner decides that the tenant cultivator had been wrongly evicted and if such decision (where there has been an appeal) is confirmed by the Board of Review, then only does the person in occupation receive a notice to vacate. The contention of the appellant that the proceedings are bad for the reason that the appellant had no opportunity to participate in the inquiry before the Commissioner cannot therefore succeed. The authority relied on by the learned Attorney for the appellant relates to a set of circumstances different from the present one. The Commissioner in that case had under section 4 (7) (b) of the Act to order in writing, a certain person to vacate the extent of paddy land, but that notice had been issued to and served on a different person. In these circumstances the learned Judges held that the procedure followed was not in accordance with the provisions of the Act and not warranted by it. I am in respectful agreement with that decision but it is of no avail to the appellant in the present case.

The learned Attorney for the Appellant also submits that the appellant and Navaratne are the tenant cultivator and the landlord respectively of this extent of paddy land and that there is room for collusive conduct on the part of Simon Naide and Kira in order to deprive the real landlord and the real tenant cultivator of their rights in this extent of paddy land. It must be remembered in this connection that under the Act a register of paddy lands is maintained and under section 35 it is a requirement that the names of the landlord, the tenant cultivator and such other particulars should be recorded therein. These registers are revised each year and the entries in the register are prima facie evidence of the particulars contained therein. There is significantly no averment either in the petition of appeal or in the affidavit annexed thereto that the names of the appellant or D. H. Navaratne appear in the relevant register of paddy lands in any capacity. Furthermore the appellant who had been

noticed to vacate the extent of paddy land by the Commissioner as far back as 20.1.71 has taken no step in the matter until the filing of the petition of appeal on 13.1.73.

The question as to who is the real tenant cultivator or the landlord are not matters for determination in these appeal proceedings (*vide Rosalin Nona v. Assistant Commissioner of Agrarian Services* 75 N. L. R. 443). In the absence of any material to the contrary it must be presumed that the Commissioner whose decision is final and conclusive had before him all the relevant documentary and oral evidence before coming to a conclusion. In any event the intrinsic evidence in the record does not certainly point to the appellant being the tenant cultivator of this extent of paddy land as contemplated in the Act.

In the result the appeal must be dismissed.

PERERA, J.—I agree.

*Appeal dismissed.*

