

1972 Present : Thamotheram, J., Wimalaratne, J., and Rajaratnam, J.

R. A. ROSALIN NONA and another, Appellants, and ASSISTANT COMMISSIONER OF AGRARIAN SERVICES, VAVUNIYA, Respondent

S. C. 950-951/68—M. C. Vavuniya, 44529

*Paddy land—Tenant cultivator's complaint of eviction by landlord—Orders of Commissioner and Board of Review that the tenant should be restored to possession—Non-compliance by landlord—Commissioner's application then to Magistrate to put into effect the order of eviction—Conclusive nature of the orders of the Commissioner and the Board of Review—Paddy Lands Act No. 1 of 1958, as amended by Acts Nos. 61 of 1961, 11 of 1964 and 25 of 1966, ss. 3, 4 (1), 4 (1A), 21, 59 (15).*

Where a person who has been ordered under the Paddy Lands Act to vacate a land fails to comply with the order, and the Commissioner then moves the Magistrate's Court under section 21 (1) of the Act for an order to evict such person through the Fiscal, the Commissioner's order made under section 4 (1) 1A (c) as well as the order of the Board of Review confirming such order are final and conclusive and cannot be questioned in the proceedings before the Magistrate under section 21. Section 21 does not permit the Magistrate to examine the validity of the order of the Commissioner, except in regard to the accuracy of the particulars furnished by the Commissioner, viz., the person mentioned in the order or the extent and description of the land. It is only in such cases that the order of the Magistrate can be challenged in an appeal preferred to the Supreme Court under section 21 (3).

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

V. K. Kandasamy, with K. Sivananthan and K. Kanag-Iswaran, for the 1st and 2nd respondent-appellant

Shiva Pasupati, Senior State Counsel, with K. M. M B. Kulatunga, Acting Senior State Counsel, for the applicant-respondent.

*Cur. adv. vult.*

July 10, 1972. THAMOTHERAM, J.—

In this case the 1st and 2nd Respondent-Appellants appealed from an order of the Magistrate of Vavuniya allowing an application of the Assistant Commissioner of Agrarian Services, Vavuniya, to evict them and all other persons in occupation of the Paddy Land known as Godawela in extent 5 acres situated at Iratperiyakulam in the district of Vavuniya and to deliver possession thereof to S. A. Abilin Singho of Navagama, Vavuniya. They have also moved this court by way of revision praying that the order of the Magistrate and the order of the Assistant Commissioner of Agrarian Services be set aside.

The Assistant Commissioner of Agrarian Services held an inquiry under Section 4 (1) 1 A (a) of the Paddy Land Acts No. 1 of 1958 as amended by 61 of 1961 and 11 of 1964 and informed the Respondent-Appellants that he had decided that Abilin Singho of Navagama, Vavuniya, had been evicted from the said extent of Paddy Land and that if the Respondents were not appealing to the Board of Review against his decision, to restore the occupation and use of the Paddy Land to the said Abilin Singho and to report to him immediately this was done. The Respondents appealed to the Board of Review which confirmed the decision of the Assistant Commissioner.

Under Act 1 of 1958 an eviction of a tenant cultivator as described in Section 4 (1) of the Act was an offence. A person convicted of such eviction after summary trial before a Magistrate was liable to a fine not exceeding five hundred rupees and in default of payment of a fine to imprisonment of either description for a term not exceeding one month. As this provision did not prove a sufficient deterrent a new sub-section 4 (1) 1 A was introduced by Act 61 of 1961. Under this sub-section the Commissioner was empowered to hold an inquiry where a tenant cultivator notified the Commissioner that he had been evicted. If the Commissioner decided that the tenant cultivator had been evicted he had power to order that the person evicted be entitled to have the use and occupation of such extent restored to him and further to direct that every person in occupation of such extent shall vacate it on or before a date specified in the order and if such person failed to comply with the order, that he shall be evicted from such extent in accordance with the provisions of Section 21 of the Act.

In short the Commissioner was empowered by this new sub-section to inquire and make an order restoring the possession to a tenant cultivator who had been evicted. He had first to give the landlord an opportunity of being heard. The landlord had a right of appeal from the Commissioner's order to the Board of Review within 30 days of the said order. If the Board of Review confirmed the Commissioner's order or if there was no appeal then the landlord or any other person in occupation had to hand over possession to the tenant cultivator named in the order. In case of failure to do so the provisions of Section 21 of the Act were available to the Commissioner to obtain a Magistrate's order affirming his order and directing the fiscal to put into effect the order of eviction.

Section 59 (3) of the Paddy Lands Act 1 of 1958 stated that—

“The decision of the Board of Review on an appeal shall except otherwise provided in this Act be final and conclusive and shall not be called in question in any Court.”

The amending Act 11 of 1964 introduced a new Section 59. Sub-section 15 of this Section reads :

“ A Board of Review may on any appeal made under this Act to such Board confirm . . . . the determination or decision from which such appeal is made and the decision of such Board on such appeal shall be final and conclusive and shall not be called in question in any Court. ”

It is to be noted that in this sub-section the words “ except otherwise provided in the Act ” which appear in the earlier section have been omitted.

Section 3 of the Act as amended by 11 of 1964 deals with eviction after April 12th 1956 and before the coming into operation of the Act. In such cases the Commissioner was empowered to inquire into an allegation of eviction to see if it was *bona fide*. In regard to this it was stated that—

“ Where no appeal is made from the Commissioner’s decision such decision was final and conclusive and shall not be called in question in any Court. ”

A similar clause appears in the amending Act 25 of 1966 with reference to an order of the Commissioner under 4 (1) 1 A (c). This also reads :

“ Where no appeal is made from the Commissioner’s decision within the time allowed therefor, such decision shall be final and conclusive and shall not be called in question in any legal proceedings in any Court. ”

The position therefore is clear that under the Paddy Lands Act 1 of 1958 read with the subsequent amendments where a Commissioner under its provisions inquired into an alleged eviction and ordered the restoration of possession the rights and obligations created by that order flowed from the date given therein, if no appeal to the Board of Review was made. But where the person aggrieved appealed to the Board of Review the consequences flowed from the date of the confirmation of the Commissioner’s order. Both the order of the Commissioner and the order of confirmation by the Board were final and conclusive and could not be questioned in any Court of law.

Moreover by Section 3 of the amending Act 11 of 1964 a new sub-clause was added 4 (1) 1 A d (ii) which said :

“ The landlord of such extent shall for each day during which a person in respect of whom an order . . . . is made continues to occupy such extent after the dates specified in that order, pay to the person mentioned in sub-paragraph 1 of this paragraph damages at such rate as may be prescribed unless such landlord satisfies the Commissioner that the person was evicted without the knowledge, consent or connivance of such landlord. ”

This new sub-clause in regard to damages shows that the legislature intended the decision of the Commissioner and the decision of the Board of Review to be final and for the consequences of the order, including payment of damages, to flow immediately from the date specified. It did not intend to give an opportunity to the landlord to canvass the whole issue once again before the Magistrate when it gave the Commissioner the right to invoke Section 21 of the Act.

It remains now to consider the provisions of Section 21 to see whether there is anything in it to support Mr. Kandasamy's contention that when a Commissioner takes action under Section 21 the Magistrate must independently satisfy himself of the validity of the Commissioner's order before affirming. Section 21 (1) reads :

" Where any person, who has been ordered under this Act by a cultivation committee or the Commissioner to vacate any extent of Paddy Land and to deliver possession thereof to any specified person, fails to comply with such order, such committee or the Commissioner . . . may present to the Magistrate's court within whose local jurisdiction such extent lies, a written report specifying the nature of such order and the person to whom it was issued describing the extent of paddy land to which such order relates stating that such person has failed as required by such order to vacate . . . . praying for an order to evict such person and all other persons in occupation . . . mentioning the person to whom delivery of possession of such extent shall be made."

Mr. Kandasamy conceded that the Assistant Commissioner in the instant case had done as required by this sub-section.

Sub-section 2 of the same Section states : " Where a written report is presented to the Magistrate's Court under sub-section (1) such court shall issue an order directing the persons specified in such report . . . to be evicted forthwith . . . . After making such order the court shall give notice of such order through the fiscal or peace officer to the person against whom the order is made ."

The main complaint of the appellants was that they were not allowed to canvass the validity of the Commissioner's order before the Magistrate. A close examination of Section 21 makes it clear that it does not permit the Magistrate to examine the validity of the order of the Commissioner. If the Commissioner had acted in accordance with 21 (1), under sub-section 2 the Magistrate shall make the order of eviction and the requirement that he shall give notice of such order through the fiscal or peace officer to the person against whom the order is made shows that even the presence of the person affected is not necessary when he makes the order.

Sub-section 3 of this Section states that —

“ Any person aggrieved by an order made by the Magistrate's Court under sub-section 2 may appeal therefrom to the Supreme Court and the provisions of chapter 30 of the Criminal Procedure Code shall apply accordingly as if the appeal were preferred against a final order of a Magistrate's Court in respect of which an appeal lies to the Supreme Court under that chapter of that Code. ”

Mr. Kandasamy stressed this provision for appeal and stated that an appeal from an order of eviction by the Magistrate was purposeless unless the order was based on an independent judgment of the Magistrate himself, as to the validity of the Commissioner's order of eviction. In Sub-section 4 of this Section the Magistrate's order of eviction has been called an order affirming the order of the eviction of the Commissioner. The question asked is whether a Magistrate can affirm an order without considering its validity.

It seems to us that when the Commissioner presents to the Magistrate a written report specifying the nature of its order and the person to whom it was issued describing the extent of the paddy land to which such order relates stating that such person has failed as required by such order to vacate and praying for an order to evict, the Magistrate must issue the order prayed for. Any error in such order can only arise from the particulars furnished by the Commissioner under 21 sub-section 1 being incorrect, viz. the person mentioned in the order or the extent and description of the land. It is only in such cases that the order of the Magistrate can be challenged in appeal. It seems to us that the legislature having provided for an inquiry into an eviction by the Commissioner and an appeal from the order of the Commissioner to a Board of Review did not by Section 21 provide for the order to be canvassed again before the Magistrate and once again before the Supreme Court. It is to be noted that it is only the Commissioner who can move court under Section 21. If he does not, the aggrieved party will not have the opportunity, if permitted to do so, of canvassing the matter before the Magistrate and thereafter in appeal before the Supreme Court. This shows that the purpose of Section 21 is to make available to the Commissioner the services of the fiscal to enforce his order. Further there is no time limit fixed for the Commissioner to seek the assistance of the Magistrate under 21. This again shows the conclusive nature of the orders of the Commissioner and the Board of Review.

The present Section 21 replaced an earlier Section which was repealed. Under the earlier Section the Magistrate was required to issue summons on the person named in the report to appear and show cause why he should not be evicted. He was empowered to order a cultivation committee to occupy the land until the question whether such person should be evicted from such extent was finally determined according to law. It further provided that where a person to whom summons was issued failed to

appear on the date specified in the summons or appeared and informed Court that he had no cause to show, against an order of the eviction, the Court should issue an order directing such person to be forthwith evicted. When a person to whom summons was issued stated that he had cause to show against the order of eviction the court could proceed forthwith to hear and determine the matter or could set the case down for inquiry on some future date. If after inquiring the court was not satisfied that the person showing cause was entitled to occupy, the court should make order directing such person and all other persons in occupation of such extent to be evicted. It is significant that all these provisions are omitted in the new Section.

The Act as it now stands with amendments makes it quite clear that the Commissioner's order under 4 (1) 1 A (c) as well as the order of the Board of Review confirming such an order are final and conclusive and cannot be questioned in any proceedings in a Court of law. This includes proceedings under Section 21 before a Magistrate. We dismiss the appeal and refuse the application in revision. The learned Magistrate's order is affirmed.

WIMALARATNE, J.—I agree.

RAJARATNAM, J.—I agree.

*Appeal dismissed.*

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