

1948

Present : Soertsz S.P.J.

VAITILINGAM, Appellant, and SIVAGURU (Village Cultivation Officer), Respondent.

*S. C. 597—M. C. Vavuniya, 20,939.**Irrigation Ordinance—Power to cut channel across paddy field—Payment of compensation—Rules framed under Ordinance—Ultra vires—Chapter 312, sections 7 and 11—Rule 21.*

The Government Agent purporting to act under rule 21 of the rules framed under section 11 of Chapter 312 of the Legislative Enactments ordered a channel to be cut across the paddy field of the accused for the purpose of irrigating a tract of paddy fields. The accused blocked the channel. He was charged and convicted.

Held, that the rule did not empower the Government Agent to deprive a proprietor of his land without acquisition and compensation. Any rule purporting to do so would be *ultra vires*.

APPPEAL from judgment of the Magistrate, Vavuniya.*H. W. Jayawardene*, for the accused, appellant.*R. A. Kannangara*, *Crown Counsel*, for the Attorney General.*Cur. adv. vult.*

March 2, 1948. SOERTSZ S.P.J.—

This is a disturbing case, and, if the view taken by the Magistrate is correct, it means that persons entrusted with the framing of by-laws for the purposes of certain Legislative Enactments may, by a stroke of their pen, deprive villagers of their property without acquisition proceedings and without payment of any compensation.

The facts are, briefly, these as stated in the Magistrate's order "the fields of the accused, of one Kulanthai Sinnakuddy and some others, are irrigated by the water from the Puliyanikulam tank, which is under the control of the Assistant Government Agent, Vavuniya There is a channel from this tank extending up to the culvert between the 13th and the 14th mileposts. From this culvert there is no channel to the stretch of fields and water flows in its natural course down to them." In consequence of there being no channel the field of Sinnakuddy lacked irrigation. The Irrigation Department gave its attention to this matter and finding that it would cost Rs. 4,000 to construct a channel, and not being prepared to spend that amount of money, sought the intervention of the Assistant Government Agent who, taking a very liberal view of his powers, ordered the Village Cultivation Officer to cut a channel across the land of the accused. The officer carried out this order with great gusto. He cut a channel across the field of the accused inflicting on him the loss of one acre of his field. The accused blocked this channel. He was prosecuted evidently on the footing that a worm should not turn.

In the Court below, it was said that what was done was done on the authority of Rule 21 framed under section 11 of Ordinance No. 45 of 1917. Rule 21 runs as follows:—

“ Where it is necessary for the purpose of irrigating the fields below to open a channel through the land of a proprietor who will not be benefited thereby, such proprietor shall be bound to allow the construction of such channel without compensation. ”

It will be noticed that these rules are made by a prescribed majority of proprietors and one can understand proprietors submitting themselves to the use of their lands without compensation for the greatest good of the greatest number provided they are given that power expressly by some Legislative Enactment. But section 7 of Ordinance No. 45 of 1917, which is the parent Ordinance under which Rule 21 is stated to have been framed, does not appear to me to give any power at all to deprive a non-majority proprietor of his land without acquisition and without compensation. Be that as it may, at the time relevant for this case Rule 21 was not in operation. It is Ordinance No. 32 of 1946 that is now in force and there is no rule similar to Rule 21 framed under that new Ordinance. At any rate, Crown Counsel has not been able to find any such rule nor am I aware of any such rule. But had there been a re-enacting of Rule 21, as I have already observed, the provision that a Channel may be cut across a non-consenting proprietor's field without payment of compensation would, clearly, be *ultra vires* when regard is had to the purpose for which section 11 of the new Ordinance enacts that rules may be made by a majority of the proprietors present at a meeting of the proprietors.

I allow the appeal, set aside the conviction and acquit the accused.

Appeal allowed.
