

1963

Present : Abeyesundere, J.

P. LOKU BANDA, Appellant, *and* THE ASSISTANT
COMMISSIONER OF AGRARIAN SERVICES, KANDY,
Respondent

S. C. 236 of 1963—M. C. Kandy, 27850

*Paddy Lands Act, No. 1 of 1958—Sections 3 (2), 3 (3) (b), 21 (1)—Eviction order—
Execution—Procedure—Legality of Commissioner's decision—Burden of proof.*

Where an Order that is not made by a Court is sought to be enforced by a Court under any written law, the Court must be satisfied that such order is valid and the party affected by such order is entitled to attack its validity.

Accordingly, where the Commissioner presents to a Magistrate's Court a report under section 21 (1) of the Paddy Lands Act praying for an order to evict a person from a paddy land, it is the duty of the Magistrate to satisfy himself, before ordering eviction, that an order under section 3 (3) (b) of the Act had been legally made after proper assumption of jurisdiction by the Commissioner.

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

H. W. Jayewardene, Q.C., with *G. T. Samerawickreme*, for the respondent-appellant.

R. S. Wanasundere, Crown Counsel, for the applicant-respondent.

Cur. adv. vult.

October 1, 1963. ABEYESUNDERE, J.—

The Assistant Commissioner of Agrarian Services of the Kandy District, hereafter in this judgment referred to as the applicant-respondent, presented to the Magistrate's Court of Kandy a report under section 21 (1) of the Paddy Lands Act, No. 1 of 1958, hereafter in this judgment referred to as the Act, stating—

- (a) that after an inquiry held under section 3 (2) of the Act, it was decided that the person who was the tenant and cultivator of the paddy land called Elamullapathakotasa was evicted after April 12, 1956, otherwise than for a prescribed cause,
- (b) that the said decision was communicated in writing to the landlord of the paddy land and the landlord did not appeal therefrom to the Board of Review,
- (c) that order was made under section 3 (3) (b) of the Act that Pitawela Gedera Loku Banda and all other persons in occupation of the paddy land shall vacate it on or before November 5, 1961, and
- (d) that Pitawela Gedera Loku Banda had failed to vacate the paddy land as required by the said order.

He prayed for an order of the Court to evict Pitawela Gedera Loku Banda from the paddy land and mentioned H. A. William Singho as the person to whom delivery of possession of the paddy land should be made.

Summons was issued to Pitawela Gedera Loku Banda to show cause why he should not be evicted from the paddy land. He appeared in Court and stated that he had cause to show. The matter was fixed for inquiry. After inquiry the Magistrate made order on January 18, 1963, stating that he was "satisfied that the complainant has taken all the requisite steps under the Act" and "is, therefore, entitled to an eviction order against the respondent as the respondent has failed to show that he is entitled to occupy the extent of paddy land mentioned in the written report filed in Court" and requiring "that the respondent and all other persons in occupation of the field in question be evicted from such extent." Pitawela Gedera Loku Banda, hereafter in this judgment referred to as the respondent-appellant, has appealed to this Court from the order of the Magistrate.

The order under section 3 (3) (b) of the Act requiring the respondent-appellant to vacate the paddy land was made on October 13, 1961, by the then Assistant Commissioner of Agrarian Services of the Kandy District, hereafter in this judgment referred to as the Assistant Commissioner. The counsel for the respondent-appellant submitted that the Magistrate should have satisfied himself before he ordered the eviction of the respondent-appellant from the paddy land, that the aforesaid order of the Assistant Commissioner was valid. He also argued that the burden was on the applicant-respondent to prove the validity of the Assistant Commissioner's order. The Crown Counsel who appeared for the applicant-respondent submitted that the burden was on the respondent-appellant to show that he was entitled to occupy the paddy land and contended that there was no burden on the applicant-respondent to prove the validity of the Assistant Commissioner's order. The decision of this Court in the case of *Bandahamy v. Senanayake*¹ was cited in support of the submission made on behalf of the respondent-appellant. That case was decided by seven judges of this Court. The majority of them held that where the powers of a Court were invoked for the enforcement of an award of an arbitrator as a decree of such Court in terms of rule 58 (13) of the rules made under section 46 of the Co-operative Societies Ordinance, the party against whom the award was sought to be enforced should be noticed and given an opportunity of showing the existence of defects, even though the award did not bear any fatal flaws on its face. The view of the majority of the aforesaid judges is consistent with the following view expressed by Gratiaen, J. in the case of *W. Barnes de Silva v. Galkissa Wattarappola Co-operative Stores Society*²:—

“ it is the clear duty of a Court of law whose machinery as a Court of execution is invoked to satisfy itself, before allowing writ to issue, that the purported decision or award is prima facie a valid decision or award made by a person duly authorised under the Ordinance to determine a dispute which has properly arisen for the decision of an extra-judicial tribunal under the Ordinance. In that event alone would the Court be justified in holding that the decision or award is entitled to recognition and capable, under the appropriate rule, of enforcement as if it were a decree of Court.”

The judgment delivered by Sansoni, J. on January 20, 1959, on the appeal from the order of the Magistrate in *M. C. Matugama Case No. 26654* (S. C. Case No. 84 A-B of 1958) was cited in support of the submission made on behalf of the applicant-respondent. In that case the Government Agent of Kalutara, acting under section 120 of the Land Development Ordinance, through the Divisional Revenue Officer, filed a report in the Magistrate's Court stating that the permit granted under that Ordinance to the appellant for a certain allotment of land was duly cancelled and that the appellant was in unlawful occupation of the

¹ (1960) 62 N. L. R. 313.

² (1953) 54 N. L. R. 326.

allotment of land and had failed to vacate it though served with a notice to do so. In dismissing the appeal the judge held that the appellant could not be heard to say that there should have been proof that he was served with a notice to vacate the land, that the burden throughout was on the person summoned to appear before the Magistrate, that it was the duty of such person to show cause why he should not be ejected, and that the Magistrate was bound to make an order of ejection if he was not satisfied that the person showing cause was entitled to the possession or occupation of the land.

The view of Gratiaen, J., quoted above is unexceptionable. It was adopted with approval by a bench of three judges of this Court in the case of *Jayasinghe v. Boragodawatte Co-operative Stores*¹. Sansoni, J. agreed with the decision in that case in his judgment in the aforesaid case of *Bandahamy v. Senanayake*. The principle that may be deduced from the decisions in the aforesaid three reported cases is that where an order that is not made by a Court is sought to be enforced by a Court under any written law, the Court must be satisfied that such order is valid and the party affected by such order is entitled to attack its validity. I shall apply that principle in determining the appeal before me.

As the powers of the Magistrate's Court were invoked by the applicant-respondent to secure the execution of the Assistant Commissioner's order under section 3 (3) (b) of the Act, it was the duty of the Magistrate to have satisfied himself, before ordering the eviction of the respondent-appellant from the paddy land, that the order of the Assistant Commissioner had been legally made. The Magistrate has stated in his order that he was "satisfied that the complainant has taken all the requisite steps under the Act". The officer who presented to the Court the report under section 21 (1) of the Act and who is referred to by the Magistrate in his order as the "complainant" is not the Assistant Commissioner who made the order under section 3 (3) (b) of the Act. The Magistrate should have satisfied himself that the Assistant Commissioner who made the order under section 3 (3) (b) of the Act had jurisdiction to make such order. In sub-sections (2) and (3) of section 3 of the Act there are specified the facts which enable the assumption of jurisdiction to make an order under section 3(3) (b) of the Act. Such order, if made in the absence of any of those facts, would be invalid.

The burden was on the respondent-appellant to show cause why he should not be evicted from the paddy land. He would have shown good cause if he established that the evidence placed before the Court by the applicant-respondent did not show that the Assistant Commissioner had legally made the order which the respondent-appellant was alleged to have disobeyed and upon the basis of which his eviction from the paddy land by order of the Court was sought by the applicant-respondent. The

¹ (1955) 56 N. L. R. 462.

respondent-appellant showed by means of cross-examination of the witnesses of the applicant-respondent that there was no proof of some of the facts which were necessary for the assumption of jurisdiction by the Assistant Commissioner to make the order under section 3 (3) (b) of the Act.

Mr. A. E. A. Heppenstall was the Assistant Commissioner who held the inquiry under section 3(2) of the Act. He stated in his evidence before the Magistrate that the paddy land belonged to the Dalada Maligawa, that after an inquiry he decided that William Singho was the tenant cultivator of the paddy land and was evicted therefrom after April 12, 1956, that he could not definitely say whether the Diyawadana Nilame, who was the landlord of the paddy land, was given notice of the inquiry, and that on August 15, 1960, the Diyawadana Nilame was informed of the Assistant Commissioner's decision. The applicant-respondent Mr. P. L. N. de Silva, who also gave evidence before the Magistrate, stated that the landlord had to be given notice of the inquiry under section 3 (2) of the Act, that there was a particular form of such notice, that the form was Form No. 15, and that such notice was sent in Form No. 15 to the Diyawadana Nilame. The fact that such notice was given to the Diyawadana Nilame should have been proved by summoning him to produce the notice alleged to have been sent to him and, if after having been summoned to do so, he failed to produce such notice before the Magistrate, secondary evidence of such notice should have been given by the applicant-respondent by producing a copy of such notice. The applicant-respondent failed to lead such evidence as aforesaid in regard to his averment that notice of the inquiry was given to the Diyawadana Nilame. I hold that there was no proof that notice of the inquiry was given to the Diyawadana Nilame and that consequently there was no proof that the landlord was given an opportunity of being heard in person or through a representative at the inquiry held under section 3 (2) of the Act.

The letter marked P1 from the Diyawadana Nilame was relied on by the applicant-respondent to prove that the decision of the Assistant Commissioner after the inquiry was communicated to the Diyawadana Nilame by letter dated August 15, 1960. In the letter marked P1 the Diyawadana Nilame refers to four letters of the Assistant Commissioner bearing the aforesaid date and different reference numbers, but the subject matter of those four letters is not disclosed. It is not possible to draw from the letter marked P1 the inference suggested by the applicant-respondent that such letter indicates that the aforesaid decision of the Assistant Commissioner was communicated to the Diyawadana Nilame. I hold that there was no proof of the communication of such decision to the Diyawadana Nilame.

Mr. Heppenstall's evidence in regard to the eviction of William Singho from the paddy land was that the eviction was after April 12, 1956. There was no evidence that William Singho's eviction was before

the Act came into operation in the Administrative District in which the paddy land wholly or mainly lies. Section 3 (2) of the Act applies only where the citizen of Ceylon alleged to have been a tenant and a cultivator of a paddy land was evicted therefrom after April 12, 1956, and before the coming into operation of the Act in the Administrative District in which the paddy land wholly or mainly lies.

The applicant-respondent has failed to prove some of the facts necessary for enabling the Assistant Commissioner to assume jurisdiction to make the order under section 3 (3) (b) of the Act. Such failure constitutes a failure to prove that the Assistant Commissioner had such jurisdiction. I therefore hold that from the evidence placed before the Magistrate by the applicant-respondent it cannot be held that the applicant-respondent satisfied the Court that the Assistant Commissioner's order under section 3 (3) (b) of the Act was legally made.

I set aside the order made by the Magistrate on January 18, 1963.

Order set aside.
