

1964

Present : T. S. Fernando, J.

THE ATTORNEY-GENERAL, Petitioner, and K. M. ABEYRATNE,
Respondent

*S. C. 220 of 1964—Application in Revision in M. C.
Kandy, 34942*

Paddy land—Inquiry into eviction of tenant cultivator—Procedure—Parties who should be heard—Paddy Lands (Amendment) Act, No. 61 of 1961, s. 4(1)—Paddy Lands Act, No. 1 of 1958, as amended by Act No. 61 of 1961, ss. 4 (1A) (b), 4 (1A) (c), 4 (1A) (d) (i), 4 (1A) (d) (ii), 21 (2) (a).

At the stage when an inquiry into an eviction of a tenant cultivator is held in terms of section 4 (1) of the Paddy Lands (Amendment) Act, No. 61 of 1961, it is not necessary that any party other than the landlord should be heard. However, at the stage of execution of the order made by the Commissioner, any person against whom the order to vacate was made must be given an opportunity, by virtue of the provisions of section 21 (2) (a) of the Paddy Lands Act, No. 1 of 1958, to show cause against his threatened eviction.

APPPLICATION to revise an order of the Magistrate's Court, Kandy.

V. S. A. Pullenayegum, Crown Counsel, for the Attorney-General.

G. T. Samerawickreme, for the respondent.

Cur. adv. vult.

November 9, 1964. T. S. FERNANDO, J.—

The Assistant Commissioner of Agrarian Services of the Kandy District held an inquiry in terms of section 4 (1) of the Paddy Lands (Amendment) Act, No. 61 of 1961, and decided that the tenant cultivator of a paddy land, one acre in extent, known as Hapugaskumbura, and bounded on the north by Assadume Kumbura, on the south by Koholane Kumbura, on the east by Oya and on the west by paddy land belonging to the Dalada Maligawa and Amunu Ela, situated at Aladeniya had been evicted from such extent of land. Section 4 (1A) (b) of the Paddy Lands Act No. 1 of 1958, as amended by Act No. 61 of 1961, renders this decision of the Assistant Commissioner, in the absence of any proof to the contrary, equivalent to a decision that the eviction had been made by or at the instance of the landlord of such extent.

The landlord did not appeal to the Board of Review, and in terms of section 4 (1A) (d) (i) of the Paddy Lands Act, amended as above indicated, the person evicted became entitled to have the use and occupation of the extent of paddy land in question restored to him. Section 4 (1A) (d) (ii) enables the Commissioner to order every person in occupation of any extent of land (in respect of which a decision has been made that the

tenant cultivator had been evicted) to vacate such extent on or before a specified date ; if the person so ordered to vacate fails to comply with the order, he shall be evicted from such extent in accordance with the provisions of section 21 of Act No. 1 of 1958.

On the basis that the respondent to the present application has failed to vacate the extent of paddy land in question although ordered by the Commissioner to do so, the Assistant Commissioner invoked the procedure in eviction provided for by the said section 21. The learned Magistrate before whom the application for eviction came up for disposal held that the Assistant Commissioner who made the decision that the tenant cultivator had been evicted had acted without jurisdiction in that he violated that rule of natural justice which requires that any person against whom an order is to be made should be afforded an opportunity to show cause against the making of such order. For that reason the Magistrate refused the application of the Assistant Commissioner for an eviction of the respondent.

It is this order of the Magistrate made on 1st June 1964 that is sought to be questioned in the proceeding by way of revision that is now before me. Crown Counsel, on behalf of the Attorney-General, pointed to section 4 (1A) (c) which enacts that the landlord of the extent of paddy land in question shall be given an opportunity of being heard. There is no requirement that any other person shall be heard. He contended that where a statute has indicated that on any particular proceeding a specified procedure shall be followed, all that it is necessary to do is to follow the procedure so laid down. In other words, he argued that the doctrine of non-observance of the rule of natural justice can be invoked only where no procedure has been laid down. This argument is, in my opinion, sound, and the order of 1st June 1964 must be set aside.

Mr. Samerawickreme, for the respondent, while not challenging the soundness of the argument of Crown Counsel, contended that the respondent must now be afforded an opportunity of showing cause against his threatened eviction. Indeed, section 21 (2) (a) provides for the granting of that opportunity. Crown Counsel conceded that the respondent must now be granted such an opportunity.

Acting in the exercise of this Court's revisionary powers, I set aside the order of 1st June 1964 made by the Magistrate refusing the application of the Assistant Commissioner, and direct that, on the return of the record to the Magistrate's Court, an opportunity be granted to the respondent to show cause as required by section 21 (2) of the Act, and further action be taken as provided for by law.

Order set aside.