1975 *Present :* **Tennekoon, C. J., Walgampaya, J. and Ismail, J.**

MADDUMA BANDARAGE DONA SIRILINA KARUNARATNE MEEGODA, Petitioner

and

D. JAYASINGHE, Chairman, Paddy Lands Board of Review and 7 others, Respondents

S. C. Application No. 604 of 1974

Paddy Lands Act, No 1 of 1958, as amended, section 4 (1A)—Complaint of eviction upheld—Appeal to Board of Review—Appellants not landlords of applicant—Finding by Board of Review that original applicant not tenant cultivator—Whether right of appeal available to a person other than the landlord or a tenant cultivator who complains of being evicted—Application to quash order made by Board of Review as being void for want of jurisdiction—Writ of Certiorari.

Interpretation of Statutes—Intention of Legislature—Duty of Court.

The petitioner had made a complaint under section 4 (1A) (*a*) of the Paddy Lands Act alleging that she had been evicted from a paddy land by the 7th and 8th respondents to this application. She had also made one Mrs. Ariyatilake respondent to that application as her landlady. The Assistant Commissioner of Agrarian Services (the 6th respondent) after inquiry held that the petitioner was the tenant cultivator under Mrs. Ariyatilake and had been evicted by the 7th and 8th respondents.

The 7th and 8th respondents appealed to the Board of Review under section 4 (1A) (c) of the Paddy Lands Act and after hearing additional evidence which had not been before the original inquiring officer, the Board of Review held that the petitioner was not the tenant cultivator of the field. Accordingly, the order of the Assistant Commissioner of Agrarian Services was set aside. The Board took the view that the 7th respondent was the tenant cultivator but did not make such a finding as the person whom the 7th respondent alleged was his landlord was not a party in the appeal to the Board of Review. It also transpired before the Board of Review that the 7th and 8th respondents claiming to be the tenant cultivators had themselves made a complaint to the Assistant Commissioner of Agrarian Services that they had been evicted from this same paddy field and had made one Karunaratne, whom they alleged to be their landlord, respondent to this application. This application had been dismissed by the Assistant Commissioner of Agrarian Services.

After the Board of Review had set aside the order of the Assistant Commissioner of Agrarian Services, the petitioner made the present application for a mandate in the nature of Writ of Certiorari to quash the said decision of the Board of Review.

It was submitted on behalf of the petitioner that the decision of the Board of Review was void as being made without jurisdiction in as much as section 4 (1A) (c) gave a right of appeal to the

Board of Review only to the landlord or to the tenant cultivator who complains of having been evicted.

Held : That the order of the Board of Review holding that the petitioner was not the tenant cultivator of the field was made without jurisdiction and the petitioner was entitled to relief by way of Certiorari quashing its decision.

Per Tennekoon, C. J. : " In this state of things the intention of the Legislature being somewhat unclear, one is not able to say with assuredness that the legislature clearly intended to give a right of appeal to every person aggrieved by an order of the Commissioner, in addition to the landlord and the person evicted. Accordingly, I would read section 4 (1A) (c) as it stands, without any interpolations to give effect to the supposed intention of Parliament. "

APPLICATION for a Writ of Certiorari.

N. S. A. Goonetillleke, for the petitioner.

D. C. Amerasinghe, for the 7th and 8th respondents.

Cur. adv. vult.

November 21, 1975. TENNEKOON, C.J.

This is an application for a mandate in the nature of a Writ of Certiorari quashing the decision of the Board of Review consisting of the 1st to 5th respondents, constituted under the Paddy Lands Act. The petitioner alleges that she was the tenant cultivator of an extent of 1½ acres of paddy land, out of the paddy land known as Bihanimulla, which is of the extent of 3 acres and 13.05 perches. The petitioner further alleges that one Mrs. D. U. J. Ariyatilake is her landlady. It is common ground that the petitioner made a complaint, under section 4 (1A) (*a*) of the Paddy Lands Act, to the Assistant Commissioner of Agrarian Services, the 6th respondent, alleging that she had been evicted from the paddy land by the 7th and 8th respondents. The petitioner also made Mrs. Ariyatilake, the land-lady, a respondent to that application. The 6th respondent, after inquiry, gave a decision in which he held that the petitioner was the tenant cultivator of the extent of 1 Acre and 2 Roods of the paddy land known as Bihanimulla under Mrs. Ariyatilake and that the 7th and 8th respondents had evicted the petitioner without the knowledge of Mrs. Ariyatilake, the land-lady.

The 7th and 8th respondents appealed to the Board of Review purporting to exercise a right of appeal given under secion 4 (1A) (c) of the Paddy Lands Act. The Board of Review consisting of the 1—5 respondents, in hearing this appeal admitted a large amount of fresh evidence which had not been before the 6th respondent. The position of the 7th and 8th respondents was that they were themselves the tenant

cultivators of this paddy land under one Karunaratne who was not a party either in the proceedings before the 6th respondent or before the Board of Review. It transpired that the 7th and 8th respondents, claiming to be tenant cultivators, had themselves complained to the Assistant Commissioner on 10.3.70, that they had been evicted from this paddy field. They had made Karunaratne, a person whom they alleged was their landlord, a respondent to their application. This application had been dismissed by the Assistant Commissioner on the 6th of May, 1970. There was apparently no appeal from that order.

Upon the appeal taken by the 7th and 8th respondents the Board of Review at the conclusion of their order said :—

> " However, this Board is unable to accept the evidence before it by Mrs. Meegoda (the petitioner) or her witnesses. What is clear to this Board is that the evidence placed before us by Ompi Singho, the 7th respondent and his witnesses is the truth. His position is corroborated by the documents produced before me.
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> However, as pointed out by counsel for the petitioner, Mrs. Meegoda, the Board has no power to make a finding that Ompi Singho is the tenant cultivator. The reason for this as pointed out by counsel for Mrs. Meegoda is that the person who is alleged to be the land-lord of Ompi Singho is not a party to this appeal. If Karunaratne was a party Ompi Singho's complaint could have been treated as a complaint of eviction. But since Karunaratne, a person alleged by Ompi Singho to be his land-lord, is not a party, respondent, we are unable to give a decision in favour of Ompi Singho. Notwithstanding that, it is within the powers of the Board to give a decision on the question whether the Assistant Commissioner's decision that Mrs. Meegoda is the tenant cultivator is correct or not.
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> The Board is of the view that Mrs. Meegoda it not the tenant cultivator of this field. For that reason the Board sets aside the Assistant Commissioner's finding that Mrs. Meegoda is the tenant cultivator and holds that Mrs. Meegoda is not the tenant cultivator of this field. Ompi Singho is at liberty to make a complaint of eviction to the appropriate authority and to regain his rights. "

Counsel for the petitioner submitted that the decision of the Board of Review is void as being made without jurisdiction. In support of this proposition he points to section 4 (1A) (c) which gives a right of appeal from a decision of the Commissioner (or Assistant Commissioner) only to the landlord or to the person evicted, i.e. to the tenant cultivator who made a complaint of eviction. The latter part of that section reads :

> "*If such landlord or the person evicted* is aggrieved by such decision, he may, within thirty days of the communication of such decision to him, make a written appeal from such decision to the Board of Review. Every such appeal shall state the grounds of appeal. 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."

It is clear from this section that the right of appeal is given only to the landlord or to the tenant cultivator who complains that he had been evicted. The 7th and 8th respondents who were alleged to be the persons who evicted the petitioner are given no right to appeal under section 4 (1A) (c).

Counsel for the respondent urged that this is an obvious omission on the part of the draftsman and it could not have been the intention of the legislature to deprive a person in the position of the 7th and 8th respondents of a right of appeal. He suggested that the words of the section may be altered or added to, in order to carry out what he said was the intention of the legislature. Assuming that such a power exists in the Courts, this clearly is not an instance of a case where such a power can be exercised. It is not at all clear what the intention of the Legislature was. On a reading of section 4 (1A) (*a*), (b) and (c) one gets the impression that the complaint under section 4 (1A) (*a*) can only be a complaint of eviction by or at the instance of or for the benefit of the landlord ; for among other things, under (*c*) only the landlord and the persons evicted are given an opportunity of being heard and a right of appeal ; but the provisions of section 4 (1A) (*d*) (ii) seem to imply that the inquiry under 4 (1A) (*a*) may also extend to cases in which the landlord himself has nothing to do with the eviction. There is apparently some confused drafting here. In this state of things the intention of the legislature being somewhat unclear, one is not able to say with assuredness that the legislature clearly intended to give a right of appeal to every person aggrieved by an order of the Commissioner, in addition to the landlord and the person evicted. Accordingly, I would read section 4 (1A) (*c*) as it stands, without any interpolations to give effect to the supposed intention of Parliament.

In the result, I would hold that the Board of Review was acting without jurisdiction in making its order, the concluding portion of which has been reproduced above. The petitioner will be entitled to a mandate in the nature of a Writ of

Certiorari, quashing the said decision of the Board of Review. The petitioner will be entitled to a sum of Rs. 150 as costs, payable by the 7th respondent.

WALGAMPAYA, J.—I agree.

ISMAIL, J.—I agree.

Application allowed.