

1976

*Present : Pathirana, J., Ratwatte, J. and
Wanasundera, J.*

J. K. ALPENIS SINGHO, Petitioner
and

K. D. PILOCHCHIYA FERNANDO and ANOTHER, Respondents.

S. C. Application No. 520/75

Paddy Lands Act, No. 1 of 1958, sections 4 (1), 21—Complaint of eviction by tenant cultivator—Requirement that landlord be given an opportunity of being heard at inquiry—Effect of non-compliance with this requirement—Agricultural Lands Law, No. 42 of 1973, section 53 (4).

Writ of Certiorari—Application in 1975 to quash order made under Paddy Lands Act in 1964—Objection on ground of delay in seeking remedy—Petitioner's contention that he was unaware of any proceedings until Order under section 21 of Paddy Lands Act by Magistrate in 1973—Delay excused.

Held : (1) That where in an inquiry held by the Assistant Commissioner of Agrarian Services under the Paddy Lands Act on a complaint of eviction made by a tenant cultivator, there is a finding of eviction against a person who was not present at the inquiry, such a finding could not stand. The landlord of such extent of paddy land and the person evicted must be given an opportunity of being heard in person or through a representative at such inquiry.

(2) That the petitioner who contended that he was unaware of any such proceedings under the Paddy Lands Act until the Magistrate's Court of Gampaha issued notice on him on 31st January, 1973 under section 21(1) of the Paddy Lands Act should not be denied relief by way of *Certiorari* on the ground that his application was belated even though the order of the Assistant Commissioner of Agrarian Services had been that he vacate the said extent of paddy land on or before 10th June, 1964.

APPPLICATION for a Writ of Certiorari.

Prins Gunasekera, for the petitioner.

P. Goonesekera, State Counsel, for the respondents.

Cur. adv. vult.

June 22, 1976. PATHIRANA, J.

This is an application dated 22nd July, 1975, by the petitioner who claims to be the owner-cultivator of an extent of paddy land called Devatagahakumbura for a Writ of Certiorari to quash the order of the 2nd respondent, the Assistant Commissioner of Agrarian Services, ordering the petitioner in terms of section 4(1) (b) of the Paddy Lands Act to vacate on or before the 10th of June, 1964 the paddy land in question. The main ground on which the petitioner seeks to quash the said order is that he had no notice of the inquiry that was held by the 2nd respondent in respect of the complaint made by the 1st respondent who claimed to be the evicted ande cultivator of the said field, nor was he given any opportunity of being heard before the impugned order was made against him.

According to the 1st respondent who claimed to be the ande cultivator of the field in question, the field was cultivated by him from 1925 till September 1958. In 1925 the owner was one Issan Appu under whom he was the ande cultivator. Issan Appu sold the field to Abeywardene but the 1st respondent continued to deliver the ande share to Issan Appu who managed the field for the new owner Abeywardene. After Abeywardene's death his heirs sold the field to D. A. Charles Perera but the 1st respondent continued to cultivate the field and he gave the ground

share to Alpenis, the manager of Charles Perera. Alpenis since September 1958 prevented the 1st respondent from cultivating the said field.

The 1st respondent originally made a complaint in Case No. 1069 to the Assistant Commissioner of Agrarian Services making Issan Appu the respondent. Issan Appu, however, stated that he was not the owner of the field and the application was therefore dismissed. He thereafter filed the present application making Charles Perera the respondent alleging that he was the owner of the land at the time of eviction by Alpenis. Charles Perera was not present at the inquiry on 20.1.69 before the 2nd respondent. At the ex-parte inquiry on the evidence led by the 1st respondent, the 2nd respondent held that the 1st respondent had cultivated an extent of one acre from 1925 till September 1958, as tenant-cultivator. He had given the ande share to Alpenis, the manager of Charles Perera. Alpenis had evicted the 1st respondent in September 1958 and thereafter Alpenis as the manager of Charles Perera was cultivating the said field. By notice under section 4(1) (c) of the Paddy Lands Act dated 25.8.62 (2R4) Charles Perera was informed of the decision of the 2nd respondent that the 1st respondent had been evicted from the field in question. Thereafter the 2nd respondent in terms of section 4(1) (d) by notice dated 19th May, 1964 ordered the petitioner and every person in occupation of the paddy land in question to vacate the same on or before the 10th of June, 1964. On 31.1.73 the Magistrate, Gampaha, in Case No. 65652/A issued notice on the petitioner in terms of section 21(1) of the Paddy Lands Act directing the petitioner and all persons in occupation of the extent of paddy land to vacate forthwith the extent of the paddy land. It is the petitioner's contention that this was the first time he became aware of any proceedings under the Paddy Lands Act in respect of the paddy field in question or any dispute relating thereto.

The petitioner's case is that he became the owner of the extent of the paddy land by Deed No. 667 of 14.7.54 by purchase from one S. A. Gunawardene and from that date he had cultivated the said paddy field as owner-cultivator and that there was no tenant-cultivator in respect of the said paddy land at any time. He has also produced a certificate dated 28.7.7 from the Cultivation Committee (P4) to the effect that he had cultivated the said paddy field for 19 years as owner-cultivator and that there was no tenant cultivator at any time in respect of the said paddy land.

The finding of the 2nd respondent is that it was the petitioner who evicted the 1st respondent but that the petitioner did so as manager of Charles Perera who was the respondent at the inquiry before him. If this is factually correct then the presumption under section 4(b) that unless the contrary is proved the eviction had been made by or at the instance of the landlord of such extent is not rebutted.

Mr. Prins Gunasekera for the petitioner submitted that in this case the complaint has been made naming Charles Perera as the respondent who did not at any time appear at the inquiry. The finding of the 2nd respondent was that it was not Charles Perera who evicted the 1st respondent, but that it was the petitioner as Manager of Charles Perera. On Deed No. 667 of 14.7.54 the petitioner claimed to be the owner of the said paddy field. The date of eviction was 9.6.1960 and the reason for eviction was that there was a new owner. There was no documentary proof adduced by the 1st respondent that Charles Perera was the owner of this paddy land. There was only the oral evidence of the 1st respondent at the inquiry before the 2nd respondent that Charles Perera was the owner of the field in question.

Mr. Gunasekara therefore submitted that the 1st respondent had in order to obtain the use and occupation of the paddy land made an application naming a person called Charles Perera as the landlord who was not the landlord of the paddy land and by thus obtaining an order for eviction against a fictitious landlord sought to vacate a bona fide owner-cultivator namely the petitioner from the paddy land in question.

When an evicted tenant-cultivator makes an application to the Commissioner of Agrarian Services for the purpose of deciding the question whether or not such person had been evicted under section 4(1) (c), the landlord of such extent and the person evicted shall be given an opportunity of being heard in person or through a representative at such inquiry. If in fact the petitioner was the owner-cultivator of the field in question then there being no tenant-cultivator, no question of eviction will arise under section 4(1A) of the Paddy Lands Act for the purpose of deciding the question whether or not the 1st respondent had been evicted. There would, in addition, have been no landlord in terms of the Paddy Lands Act in respect of this paddy land for the reason that section 63(1) defines the term "landlord" as follows :

“Landlord”, with reference to any extent of paddy land, means the person, *other than an owner cultivator*, who will for the time being be entitled to the rent in respect of such extent if it were let on rent to any person, and includes any tenant of such extent who lets it to any subtenant:”

In these circumstance we agree with the contention put forward by Mr. Gunasekera that the petitioner should be given an opportunity to present his case before the Commissioner in order to establish that he was the owner-cultivator of the paddy land in question, for the reason that if the contention of the petitioner is correct then the 1st respondent had obtained the order in his favour on the misrepresentation that Charles Perera was the landlord of the said paddy land. We are not inclined to agree in the circumstances of this case with the contention of the learned State Counsel who appeared for the 2nd respondent that this applictaion having been belatedly made the remedy by way of certiorari was not available to the petitioner.

We, therefore quash the order of the 2nd respondent ordering that the 1st respondent be restored to the use and occupation of the paddy land in question and the consequential order made by the Magistrate’s Court under section 21 of the Paddy Lands Act against the petitioner to vacate the said paddy land.

We direct the Commissioner of Agrarian Services to take steps to continue the proceedings which have already commenced on the application of the 1st respondent under the repealed Paddy Lands Act as proceedings which are pending and in respect of which inquiry has commenced within the meaning of Section 53(4) (b) of the Agricultural Lands Law, No. 42 of 1973. The Commissioner, after noticing the petitioner in order to give him an opportunity of proving that he is the owner-cultivator of the said paddy land, will hear and conclude the inquiry and thereafter take action, if necessary, under section 53(4) (c).

RATWATTE, J.—I agree.

WANASUNDARA, J.—I agree.

Applicatoin allowed.