

1970 Present : H. N. G. Fernando, C.J., Sirimane, J., and
Samerawickrame, J.

K. PODIAPPU, Appellant, and THE ASSISTANT COMMISSIONER
OF AGRARIAN SERVICES, Respondent

S. C. 1026/66—M. C. Galle, 17635

Paddy Lands Act No. 1 of 1958—Eviction order thereunder—Requirement that it should be made against the right person—Sections 4 (7) (b), 21—Questions of constitutional law—Circumstances when Court will not decide them.

Where a tenant-cultivator of a paddy land makes an allegation and proves that he has been wrongfully dispossessed by a person X, proceedings against another person Y and an order made therein for eviction are not in accordance with the provisions of the Paddy Lands Act and are not warranted by them, even though Y, as a person in occupation, may be liable to be evicted if an eviction order has been duly obtained against X.

It is the practice for a court not to decide questions relating to constitutional law unless absolutely necessary to a decision of a case. Accordingly, it is not necessary to decide in the present case whether the appointment of an Assistant Commissioner of Agrarian Services is valid if it has not been made by the Judicial Service Commission.

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

No appearance for the accused-appellant.

S. S. Basnayake, as amicus curiae.

H. Deheragoda, Deputy Solicitor-General, with N. Sinnelamby, Crown Counsel, for the complainant-respondent.

Cur. adv. vult.

January 20, 1970. SAMERAWICKRAME, J.—

The appellant appeals from an order for his eviction from a field under s. 21 (5) of the Paddy Lands Act. Nandias and Jayasena had made a complaint that they were the ande-cultivators of the field and had been wrongfully dispossessed. After inquiry into the complaint, the Assistant Commissioner of Agrarian Services made order that the eviction of Nandias and Jayasena had not been made *bona fide* for any such cause as has been prescribed. An appeal against the order of the Assistant Commissioner had been dismissed by the Board of Review. Thereafter notice had been served on the appellant to vacate the field and on his failure to do so, proceedings were instituted in the Magistrate's Court, Galle, under s. 21 of the Paddy Lands Act and in those proceedings the order appealed from was made.

One of the grounds of appeal raised in his petition of appeal was that the inquiry held by the Assistant Commissioner of Agrarian Services was *ultra vires* and without jurisdiction in that he had not been appointed by the Judicial Services Commission and could not therefore exercise judicial power. As this ground of appeal raised a question of importance the decision of which would affect the operation of the Paddy Lands Act this matter was referred to the present Bench for decision.

There was no appearance for the appellant but Mr. Advocate Sinha Basnayake at the request of Court appeared as *amicus curiae* and ably and lucidly placed before this Court the matters that may be urged on behalf of the appellant.

The eviction of which the cultivators Nandias and Jayasena complained and which was found at the inquiry not to have been made *bona fide* for cause was alleged and found to have been made by one Jayawickrame who was also the person who entered into occupation immediately after the eviction of the cultivators. In terms of s. 4 (7) (b) the Commissioner had in writing to order Jayawickrame that he and all other persons in occupation of the field should vacate it and if Jayawickrame failed to comply with that order the Commissioner is empowered under s. 21 (1) to institute proceedings against Jayawickrame for an order of eviction. The notice under s. 4 (7) (b) has been made not on Jayawickrame but on the appellant and the proceedings have also been instituted not against Jayawickrame but against the appellant. The proceedings against the appellant and the order for eviction made therein are not in accordance with the provisions of the Act and are not warranted by them.

It is true that if notice had been served on Jayawickrame and proceedings had and an eviction order obtained against him, the appellant as a person in occupation was liable to be evicted. Is the defect then one of form and not of substance? I am unable to take the view that it is only a matter of form. The person who is found to be in occupation immediately after the eviction may be taken to be the person who either did the eviction or caused it to be done or in whose interest it was done.

There is justification therefore that an order should issue to him that both he and all persons in occupation should vacate the field. The others in occupation are either persons under him or at least persons let into occupation by reason of the eviction done by him or in his interest. There is therefore reason and substance underlying the provision that notice shall be issued to that person. On the other hand it is against principle that on an allegation made and proved against one person an order should issue on another.

It appears to me therefore that the proceedings had against the appellant and the eviction order made therein unwarranted by the provisions of the Paddy Lands Act are bad in law. The learned Deputy Solicitor-General did not contend that the order was in the circumstances justified by law.

This matter may therefore be decided without a decision on the point touching the validity of the inquiry held by the Assistant Commissioner without an appointment by the Judicial Service Commission. It is the practice for a court not to decide questions of a constitutional nature unless absolutely necessary to a decision of a case—vide observations of H. N. G. Fernando, C.J., in *The Attorney-General v. Kodeswaran*¹. I, therefore, refrain from addressing myself to the question of the validity of the inquiry held by the Assistant Commissioner of Agrarian Services.

The appeal is allowed and the order made by the learned magistrate under Section 21 (5) of the Paddy Lands Act is set aside.

H. N. G. FERNANDO, C.J.—I agree.

SIRIMANE, J.—I agree.

Appeal allowed.

