

1956

Present : Gunasekara, J., and Sinnetaimby, J.

S. M. SOLAMUTHU, Appellant, and COMMISSIONER
FOR REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

Citizenship Case No. 84/1956—Application C/4,417/0

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 15—Right of appeal thereunder—Power of Supreme Court to order fresh inquiry—Application for registration—Evidential value of investigation officer's report.

The appellate jurisdiction that is conferred on the Supreme Court by section 15 of the Indian and Pakistani Residents (Citizenship) Act necessarily involves a power to set aside the order that is appealed from ; and such a power in turn implies a power to order the Commissioner to take any consequential steps which it may be necessary for him to take so that he may dispose of the application for registration.

Where, in an application for registration under the Indian and Pakistani Residents (Citizenship) Act, the rejection of the applicant's testimony that he was resident on a certain Estate was based entirely upon an allegation in an investigation officer's report which was not disclosed to the applicant and which he was given no opportunity of meeting—

Held, that it was not open to the Commissioner to reject the applicant's evidence upon such a ground.

APPPEAL against an order made under the Indian and Pakistani Residents (Citizenship) Act.

Cecil de S. Wijeratne, for the applicant-appellant.

R. S. Wanasundera, Crown Counsel, for the respondent.

Cur. adv. vult.

November 9, 1956. GUNASEKARA, J.—

This is an appeal against an order made under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, refusing an application made by the appellant, Sithambalam Mookan Solamuthu, for registration as a citizen of Ceylon.

The application is dated the 20th July 1951 and the order in question was made by a deputy commissioner on the 14th December 1955 after an inquiry held on that day in pursuance of a decision under section 9 (3) (a) of the Act. One of the questions for determination at this inquiry was whether the appellant had been continuously resident in Ceylon during the period 1st January 1936 to 20th July 1951. The only evidence

adduced at the inquiry was that of the appellant himself, who presented his case in person. At the close of his evidence the deputy commissioner made the following order :—

“ Applicant has no witnesses to prove the period of residence from 1-1-36 to 1947. During this period he states he was at Erracht Estate and at Sunderland Estate. Particulars verified at Sunderland Estate show that Solamuthu s/o Mookan who had been at Sunderland Estate is married, whereas the applicant states that he is not married. As such this evidence cannot relate to applicant. There is also no evidence of residence of applicant at Erracht Estate. It was open to applicant to produce witnesses to prove his period of residence, but he failed to do so. He has no documentary evidence either. I refuse the application and inform the applicant accordingly ”.

The verification that is referred to by the deputy commissioner was an investigation made by an officer of his department behind the appellant's back. The rejection of the appellant's testimony that he was resident on Sunderland Estate is based entirely upon an allegation in the investigating officer's report which was not disclosed to the appellant and which he was given no opportunity of meeting. It was not open to the deputy commissioner to reject the appellant's evidence upon such a ground. He was also in error when he held that there was “ no evidence of residence of applicant at Erracht Estate ”. On that point he had before him the oral evidence of the appellant and a certificate from the superintendent of the estate which the appellant had submitted in support of his application. For these reasons, the order that is appealed from must be set aside.

There has been no proper inquiry into the appellant's application, and an order cannot be made upon it until such an inquiry has been held. It is contended for the Crown that this court has no power to remit the case to the respondent for a fresh inquiry. It seems to me that even in that view of the law a fresh inquiry must be held once this court has set aside the order that is the subject of the appeal ; for the proceedings upon the application cannot end at the point at which they would then be left, but must be continued by the Commissioner from that point.

The learned crown counsel has cited the case of *Pitchamuthu v. Commissioner for Registration of Indian and Pakistani Residents*¹ as supporting his contention. The decision in that case, however, provides no answer to the present question. The question there was whether, in a case where the order that was appealed from was not shown to be wrong, this court had the power to remit the case to the Commissioner to enable the appellant to supplement his case by adducing further evidence. That is different from the present question, which is whether, in a case where the order that is appealed from is set aside, this court can order a fresh inquiry. In my opinion, the appellate jurisdiction that is conferred on the court by section 15 of the Act necessarily involves a power to set aside the order that is appealed from ; and such a power in turn implies a power to order the Commissioner to take any consequential steps which

¹ (1955) 57 N. L. R. 181.

it may be necessary for him to take so that he may dispose of the application for registration. In *Paramasivam v. Commissioner for Registration of Indian and Pakistani Residents*¹ Gratiaen J. held, *obiter*, that this court has the power and the duty to order a fresh inquiry whenever justice cannot be achieved by other means. With all respect, I agree with that view.

I would set aside the order made by the deputy commissioner and order that a fresh inquiry be held in pursuance of section 9 (3) (a) of the Act, and I would order the respondent to pay the appellant Rs. 105 as the costs of this appeal.

SINNETAMBY, J.—I agree.

Order set aside.
