

1955

Present : Basnayake, A.C.J., and Pulle, J.

P. PITCHAMUTHU, Appellant, and COMMISSIONER FOR
REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

*S. C. 489—Indian and Pakistani Residents (Citizenship) Appeal
No. C. C. 3347*

*Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949—Section 15—Right
of appeal thereunder—Powers of the appellate Court.*

An order made under section 14 (7) (b) of the Indian and Pakistani Residents (Citizenship) Act is appealable under section 15 of that Act.

In an appeal preferred under section 15 of the Indian and Pakistani Residents (Citizenship) Act the Supreme Court has no power to remit the case back to the Commissioner for further investigation.

APPPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

Walter Jayewardene, with S. P. Ammasingham, for applicant-appellant.

H. A. Wijemanne, Acting Deputy Solicitor-General, with R. S. Wanasundera, Crown Counsel, for respondent.

September 2, 1955. BASNAYAKE, A.C.J.—

When this appeal came up for hearing before my brother Pulle, on 6th June this year, learned Counsel for the appellant invited him to remit the case back to the Commissioner for the Registration of Indian and Pakistani Residents to enable him to adduce further evidence regarding the residence of the appellant's children.

As my brother was not satisfied that such an order could properly be made by this Court in an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 (hereinafter referred to as the Act), he gave Counsel an opportunity of presenting a fuller argument on the point and ordered that the case be relisted when they were ready. The matter has now been listed in pursuance of that order.

Learned Deputy Solicitor-General who appears for the Crown has raised a preliminary objection to the appeal being heard at all. He contends that the order against which the appeal has been taken is one made under section 14 (7) (b) of the Act and that an appeal does not lie against such an order. He submits that an appeal lies only against an order made under section 11 or 14 (6).

It will be helpful if I were to state shortly the facts of this case before I discuss the argument of the learned Deputy Solicitor-General.

The appellant Pitchamuthu Pitchamuthu who applied for registration as a citizen of Ceylon under the Act was given notice under section 9 (1) by the Deputy Commissioner that he had decided to refuse his application on the grounds specified in the notice, unless he showed cause to the contrary within a period of three months from the date thereof. Thereupon the appellant asked the Deputy Commissioner to fix an inquiry under section 9 (3) (a) so that he may show cause.

The Deputy Commissioner accordingly made order under section 9 (3) (a) appointing the time and the place for an inquiry. At the close of the inquiry the Deputy Commissioner made order refusing the application under section 14 (7) (b). The present appeal is from that order.

Section 15 which provides for an appeal to this Court reads as follows :—

“ (1) An appeal against an order refusing or allowing an application for registration may be preferred to the Supreme Court in the prescribed manner by the applicant or, as the case may be, by the person who lodged any objection which has been overruled by the order.

“ (2) Each appeal under this section shall be preferred within three months of the date of the order by means of a petition setting out the facts and the grounds of appeal.

“ (3) The date on which an order allowing an application takes effect shall—

(a) where an appeal has been preferred, be the date on which the Supreme Court affirms such order or makes or directs the Commissioner to make such order ; and

(b) where an appeal has not been preferred, be the date next succeeding the day on which the time limit for appeals, specified in sub-section (2), expires ”.

Learned Deputy Solicitor-General's argument that an appeal has been given only against an order made by the Commissioner under section 11 or section 14 (6) is one that does not commend itself to us. We are unable to read into section 15 the restriction he seeks to place on it. That section gives a right of appeal “ against an order refusing or allowing an application for registration ”. An order made under section 14 (7) (b) at the close of an inquiry held in pursuance of section 9 (3) (a) refusing an application is clearly within the words of section 15 and cannot be excluded from its ambit. There is nothing in the statute that restricts the application of the words in section 15 to appeals from orders refusing or allowing application for registration under section 11 or 14 (6). We therefore overruled the preliminary objection and proceeded to hear the appeal on its merits.

The appellant has not satisfied us that the Deputy Commissioner was wrong, nor has he been able to point to any provision of law under which this Court may remit an appeal back to the Commissioner for further investigation. Indeed we do not think that such a procedure is contemplated by the Act. The powers of this Court in an appeal are to be found in section 15 itself, and this Court is not entitled to exercise any powers

outside those conferred by that section. The power to remit for further investigation is not inherent in that section and cannot be exercised unless it is expressly granted. Here there is no such express grant. Such a power is granted by section 37 of the Courts Ordinance, section 347 of the Criminal Procedure Code and section 773 of the Civil Procedure Code. But those provisions apply only to proceedings which are regulated by those enactments and do not extend to an appeal under section 15 of the Act.

When a statute creates a new jurisdiction and confers new powers for carrying out the objects of the statute and gives a right of appeal from the decisions of the tribunal so created, the powers of the appellate Court when hearing an appeal under the statute are limited to those expressly granted.

We accordingly dismiss the appeal with costs which we fix at Rs. 105.

PULLE, J.—I agree.

Appeal dismissed.

