

Present : De Sarmpayo J.

1922.

THE CHAIRMAN, SANITARY BOARD,
v. KANAGARATNAM.

212—P. C. Matale, 17,603.

Appeal—Housing and Town Improvement Ordinance, No. 19 of 1915, s. 74—“ Closing order ” prohibiting the use of a building by Magistrate—Appeal to Supreme Court—Tribunal of Appeal.

An appeal lies to the Supreme Court from a “ closing order ” made by a Police Magistrate under section 74 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915, prohibiting the use of a building for human habitation.

THE facts appear from the judgment.

Jansz, C.C., for respondent, raised the preliminary objection that there was no appeal to the Supreme Court from an order made by the Police Magistrate under section 74 of Ordinance No. 19 of 1915. The only appeal that is contemplated by the Ordinance is to the special “ *Tribunal of Appeal* ” constituted under chapter II.

Spencer Rajaratnam, for accused, appellant.—Ordinance No. 19 of 1915 contemplates two sets of orders. One set made by the Chairman of the local authority appeals from whose orders are taken to the “ *Tribunal of Appeal* ” (see sections 16 and 26): and the other set of orders made by the Police Magistrate, from whose orders the appeals should be to the “ *Court of Appeal*,” section 74 (6). The Ordinance nowhere gives power to the “ *Tribunal of Appeal* ” to revise the orders made by a Police Magistrate. Therefore “ *Court of Appeal* ” must signify something other than the “ *Tribunal of Appeal*,” i.e., it signifies the ordinary “ *Court of Appeal*,” viz., the Supreme Court. Even if the Ordinance No. 19 of 1915 does not grant the right of appeal to this Court, the Supreme Court is entitled to hear this case in appeal in the exercise of the powers vested in it under section 39 of the Courts Ordinance.

Further he argued on the merits.

Jansz, C.C., for respondent—Though the Supreme Court is entitled to hear this appeal under section 39 of the Courts Ordinance, it will not exercise that power unless the appellant has a right of appeal. If no right of appeal is provided by Ordinance No. 19 of 1915 from an order under section 74, the appellant cannot appeal to any Court.

Cur. adv. vult.

1922. June 14, 1922. DE SAMPAYO J.—

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This is an appeal from a "closing order" made by the Police Magistrate under section 74 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915, prohibiting the use of a certain building for human habitation. Crown Counsel Mr. Jansz, appearing for the respondent, the Chairman of the Sanitary Board, objects to the appeal being entertained on the ground that the appeal should be, if at all, to the Tribunal of Appeal constituted by the Ordinance. Sub-section (6) of section 74, under which the order appealed from has been made, enacts as follows:—"Where an appeal is made against a closing order, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not exceeding Rs. 20 a day during the non-compliance with the order, unless he satisfies the Court before which proceedings are taken for imposing the fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay; and when the appeal is heard, the *Court of Appeal* may, on dismissing the appeal, impose the fine as if it were the Court before which the summons was returnable."

What is the "Court of Appeal" referred to in this sub-section? The "Court of Appeal" in the ordinary acceptance of the terms is the Supreme Court which, under the Courts Ordinance, has appellate jurisdiction in respect of judgments and orders of the District Courts, the Courts of Requests, and the Police Courts of the Island, and consequently the Ordinance No. 19 of 1915 appears to contemplate appeals to the Supreme Court from "closing orders" made by a Police Magistrate under section 74 (1). There is no doubt that section 83 of the Ordinance provides for the constitution of a special "Tribunal of Appeal" consisting of a president and two assessors, but what is the jurisdiction of this Tribunal? Section 93 (1) declares that "the Tribunal of Appeal shall, subject to the provisions of this Ordinance, have jurisdiction and power to hear and determine all appeals and other matters referred to them under this Ordinance."

It will be noticed that the power of this Tribunal is subject to two qualifications: First, it is "subject to the provisions of this Ordinance," and if I am right in holding that the Ordinance provides for appeals to the Supreme Court from "closing orders," there is no appeal from such orders to the Tribunal of Appeal. Secondly, it has power to hear and determine only such appeals and other matters as are "referred to them under this Ordinance." Now there are certain appeals expressly given to the Tribunal of Appeal under the Ordinance; for instance, from a refusal of the Chairman of the Sanitary Board to approve of plans for buildings, &c. (section 16), and from orders of the Chairman under chapter II. with regard to the laying out of streets (section 26). The Ordinance nowhere gives power to the Tribunal to entertain appeals from the orders of a

Police Magistrate. Apart from these limited *quasi-judicial* functions, the Tribunal of Appeal has certain executive and administrative duties assigned to it by the Ordinance; e.g., assessment of compensation payable under the Ordinance (section 81 (1)), and giving relief in cases of informality in the execution of any improvement scheme (section 100 (1)). Moreover, it is a transitory tribunal the members holding office only for a term of one year. It is quite clear that the Tribunal of Appeal is not the "Court of Appeal" referred to in section 74 (6) of the Ordinance. I think the name is unhappy. The Tribunal, in fact, appears to me merely a board vested with the power of control in certain respects of the local authorities in connection with schemes of housing and town improvements. In my opinion this appeal is rightly preferred to this Court.

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The order appealed from cannot stand. The Chairman of the Sanitary Board applied under section 74 (1) of the Ordinance for an Order prohibiting the use for human habitation of two rooms in the appellant's house. The rooms are those marked A and B in the plan, which the appellant denied were used for living in. He said they were used as the kitchen of the main building C, in which he lives. At the inquiry two witnesses, namely Dr. Chellappah, Sanitary Officer, and Wanigsekera, Sanitary Inspector, gave evidence in support of the application. These officers appeared to have done their duties of inspection and observation very perfunctorily. The inspection of the Medical Officer was in the daytime, and was about six months before the application, and all that he could say was that the appearance of the rooms gave him the impression that people occupied them. He said further, "the roof is straw, and is used for kitchen purposes." This is a curious statement if rightly recorded. The straw-covered roof could not possibly have been used for kitchen purposes. He must have meant that the rooms were used for kitchen purposes, and that entirely supports the defence. He inconsequently added, however, that Tamil coolies occupied the rooms, though he previously said he only spoke from the appearance of the rooms. The appellant protests that as a strict Hindu he would never allow his kitchen to be occupied by Tamil coolies. In any case I cannot attach much value to the doctor's evidence on this point. The Inspector gives the result of his inspection about three months before the present application. He says he saw some dirty mats against the wall of room B. He could not give the date of his visit, but the visit was in the morning. He says: "I did not visit it at night, as I cannot." I do not know why not. At all events if he did not, his evidence is to that extent valueless. Then occurs this significant passage. "There is cooking done in A. I cannot say whether tenants occupy B. If accused says it is used only for cooking purposes, I cannot deny it." If he cannot deny it, then the appellant's evidence, which, in contrast to that of these witnesses, is definite, full, and consistent, must

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be accepted as true. The Inspector also, like the doctor. inconsequently adds: "The people who were in the building were Tamil coolies of the cooly type." He had not said before that there were any people in the building.

Neither of these officers appears to understand what it was they were expected to find out by inspection and to prove in Court. Their evidence as it stands reads like nonsense. It is strange that all throughout not a word is said about the rooms in question being unfit for human habitation, though that is the foundation for the application. Every assistance should certainly be given to the sanitary authorities to enable them to exercise their powers in the interests of the public, but the ordinary rights of private individuals should not be lightly interfered with upon such evidence as was given in this case.

The order is set aside.

Set aside.
