

1964

Present : Sirimane, J.

M. MOHAMED LEBBE and others, Appellants, and
A. MADANA (D. R. O., Yatinuwara), Respondent

S. C. 545/63—Application for Revision in M. C. Kandy, 33,916

Land Acquisition Act (Cap. 460)—Sections 38, 40, 42 (2)—Order for taking possession of a land—Mode of taking possession—Application to Magistrate's Court—Ex parte nature thereof.

Where an officer who is directed by an Order under section 38 of the Land Acquisition Act to take possession of a land makes an application to the Magistrate's Court, under section 42 (2), for an order directing the Fiscal to deliver possession of that land, any person in occupation of the land is not entitled to be heard in opposition to the application.

APPPLICATION to revise an order of the Magistrate's Court, Kandy.

George Candappa, for the Respondents-Appellants.

S. Sivarasa, Crown Counsel, for the Applicant-Respondent.

Cur. adv. vult.

June 5, 1964. SIRIMANE, J.—

One Ananda Madana, the D. R. O. of Uda Nuwara and Yatinuwara, applied to the Magistrate's Court of Kandy under Section 42 (2) of the Land Acquisition Ordinance (Chapter 460) for an order directing the

Fiscal to deliver possession of a land sought to be acquired by the Crown. A notice had been issued on the appellants (to which, in my opinion, they were not entitled) and they claimed a right to show cause against this application. Their claim was disallowed by the learned Magistrate, and they have moved this Court to revise the Magistrate's order.

Section 42 (2) reads as follows :—

“ Where any officer directed by an Order under Section 38 to take possession of any land is unable or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered, such officer shall, on his making an application in that behalf to the Magistrate's Court having jurisdiction over the place where that land is situated, be entitled to an order of that court directing the Fiscal to deliver possession of that land to him for and on behalf of Her Majesty. ”

Section 38 provides (inter alia) that the Minister may by an Order published in the *Gazette* direct the acquiring officer or any other officer authorised by such acquiring officer to take possession of the land acquired. Where it becomes necessary to take immediate possession of such land on the ground of any urgency the Minister is empowered by this Section to publish an Order directing an officer to take possession even before questions of compensation, etc., are settled.

Section 40 provides that where an Order is made under Section 38 authorising an officer to take possession, the land in question vests absolutely in Her Majesty free from all encumbrances.

An examination of the relevant Sections in the Ordinance shows that the scheme of the Ordinance is to enable the Crown to take immediate possession of a land which is urgently needed for a public purpose. The words of Section 42 (2) quoted above clearly show that “ any officer directed by an Order under Section 38 to take possession shall . . . be entitled to an Order of Court directing the Fiscal to deliver possession.”

The case of *Loku Banda v. The Assistant Commissioner of Agrarian Services, Kandy*¹, relied on by the appellants can easily be distinguished. There, the Assistant Commissioner of Agrarian Services sought the enforcement of an “ Eviction Order ” made under Section 3 (b) of the Paddy Lands Act, No. 1 of 1958. Section 21 of that Act provides the procedure to be adopted when such an enforcement is sought. A written report has to be presented to court and Section 21 (2) provides that the court should issue summons to the person named in such report to appear and show cause on dates specified in the summons.

I am of the view that the learned Magistrate was correct when he reached the conclusion “ that what is contemplated is an ex-parte application for something in the nature of a writ . . . ”. The appellants are not entitled to be heard in opposition to the application made to court by the D. R. O., and this application to revise the order of the learned Magistrate is refused with costs.

Application refused.

¹ (1963) 65 N. L. R. 401.