1958 *Present* : **H. N. G. Fernando, J.**

D. ARUNASALAM PILLAI, Appellant, *and*
COMMISSIONER FOR THE REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. 645—Citizenship Case C. 4363

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (as amended by Act No. 45 of 1952)—Section 8A—Refusal of application for registration as citizens—Death of appellant pending appeal to Supreme Court—Widow cannot prosecute the appeal thereafter.

Where a person, whose application for the registration of himself and his family as citizens has been refused, dies pending his appeal to the Supreme Court, there is no provision in the Indian and Pakistani Residents (Citizenship) Act to permit the appellant's widow to prosecute the appeal with a view to securing the registration of herself and her children.

APPEAL under the Indian and Pakistani Residents (Citizenship) Act.

Sir Ukwatte Jayasundera, Q.C., with *C. Shanmuganayagam*, for the applicant-appellant.

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

Cur. adv. vult.

November 24, 1958. H. N. G. FERNANDO, J.—

In this case Counsel for the appellant states that the appellant, who had applied for the registration as citizens of himself and his family, has died while his appeal to this Court was pending. I was invited to permit the appellant's widow to prosecute the appeal with a view to securing the registration of herself and her children.

Section 8A of the Act No. 3 of 1959 (as amended by Act No. 45 of 1952) provides for the case where an applicant dies before an order is made by the Commissioner upon his application, and permits the proceedings to be continued in such a case. The Legislature did not, however, think fit to enact similar provision for the case of the death of an applicant pending an appeal to this Court against an order of the Commissioner refusing the application. To allow such an appeal to be prosecuted notwithstanding the death would be tantamount to legislating for a *casus omissus*. The Court has in my opinion no such jurisdiction. The appeal is rejected.

Appeal rejected.