

1974

Present : Pathirana, J., and Ismail, J.

M. L. P. LAISAHAMY, Appellant, and G. S. DE SILVA
(Assistant Commissioner of Agrarian Services), Respondent

S. C. 23/73—M. C. Hambantota, 69378

*Paddy Lands Act—Sections 4 (1) (c), 21, 51 (3)—Procedure in eviction—
Evidence Ordinance, s. 114.*

A written report to the Magistrate's Court under Section 21 (1) of the Paddy Lands Act may be presented by an Assistant Commissioner other than the Assistant Commissioner who made the order for eviction.

When a Magistrate makes an order under Section 21 (2) of the Paddy Lands Act, he does not act judicially but is only making a ministerial order. He is not obliged to give to the person against whom the order is made an opportunity to show cause against such order.

APPEAL from an order of the Magistrate's Court, Hambantota.

J. W. Subasinghe, for the respondent-appellant.

Gamini A. L. Abeyratne, State Counsel, for the petitioner-respondent.

February 7, 1974. PATHIRANA, J.—

In view of the judgment of *Rosalin Nona v. The Assistant Commissioner of Agrarian Services, Vavuniya*¹ 75 N.L.R. 443, there is no right of appeal in this case.

Mr. Subasinghe, learned Attorney-at-law for the appellant, raises two matters which according to him are outside the scope of the above judgment.

He submits, firstly, that the learned Magistrate did not have jurisdiction to entertain the application as the proper party did not make the application under Section 21 (1) of the Paddy Lands Act No. 1 of 1958 before the Magistrate. Secondly, that there was a violation of the principle of natural justice, namely, the rule of *Audi alteram partem*, in that the learned Magistrate did not under Section 21 (2) give the appellant an opportunity of being heard before he made the order under it.

¹ (1972) 75 N. L. R. 443.

Mr. Subasinghe submits that the Assistant Commissioner of Agrarian Services, who made the order against the appellant was M. B. Thambillimulla, while the Assistant Commissioner of Agrarian Services who filed the written report in terms of Section 21 (1) was a different person, namely, G. S. de Silva. He relies on Section 21 (1) and states that only the Commissioner or "any person authorised on that behalf by such Commissioner" may present to the Magistrate's Court a written report specified in the Section. He submits that Mr. G. S. de Silva is not the person authorised in that behalf by the Commissioner to make this report. An affidavit, the contents of which are uncontroverted, has been filed in this case by the respondent to the effect that Mr. G. S. de Silva is the Assistant Commissioner of Agrarian Services.

There are answers to this contention. Firstly, the presumption under Section 114 of the Evidence Ordinance is that all official acts have been regularly performed. Secondly, Section 51 of the Act is an answer to the contention raised by Mr. Subasinghe. Section 51 (3) states that an Assistant Commissioner of Agrarian Services may exercise all or any of the powers of the Commissioner under this Act within the area to which such Assistant Commissioner is appointed. For these reasons we hold that the proper person under Section 21 (1) has made the written report to the Magistrate's Court.

The next submission is that the rule of *audi alteram partem* has not been observed by the learned Magistrate before he issued an order under Section 21 (2). In our view the Magistrate when making an order under Section 21 (2), is not acting judicially, but is only making a ministerial order.

Under Section 21 (1) of the Act where a written report is presented to the Magistrate's Court, it becomes mandatory for the Court to issue an order directing the persons specified in such report and all other persons in occupation of the extent of the land specified in the order to be evicted forthwith from such extent. The Sub-Section next states that after making such order the Court shall give notice of such order through the Fiscal or Peace officer to the person against whom the order has been made. At this stage it may be noted that Section 21 (2) does not say that the order should be executed and delivery of possession given to the person mentioned in the report.

The next step contemplated in the Act is set down in Section 21 (3), which gives a right to any person aggrieved by an order made by the Magistrate under Sub-Section 2 to appeal therefrom to the Supreme Court. The only remedy therefore

available to any aggrieved person is to appeal to the Supreme Court. Section 21 (4) states that if no appeal is preferred or if an appeal has been preferred, after the final decision of the Supreme Court affirming the order of the eviction had been duly certified to the Magistrate's Court, the Magistrate shall, on the application of the person by whom the written report under Sub-section (1) was presented, direct the Fiscal or the Peace officer to evict from the extent of paddy land to which the order of eviction relates, all persons bound by the order of the eviction and deliver possession of such extent to the person mentioned in such report.

It will thus be seen that although the Magistrate's Court will issue an order under Section 21 (2) and also give notice of such order to the person against whom such order is made, that order is not executed till an appeal, if any, is taken from such order to the Supreme Court. Section 21 therefore nowhere contemplates that before the Magistrate's Court makes an order under Section 21 (2) any opportunity should be given to the person against whom the order is made to show cause against such order. This person is not without his remedy at this stage as he is entitled to under Section 21 (3) to appeal to the Supreme Court from the order of the Magistrate under Section 21 (2).

Section 21 (2) is not open to the construction that before the Court issues an order an opportunity should be given to show cause why the order should not be issued. We fail to see what other reasons could be urged by the appellant even if she had reasons to show cause because she is presumed to have urged all her claims at the inquiry before the Assistant Commissioner. This order according to Section 4 (1) (c) is final and conclusive and shall not be called in question in any legal proceedings in any Court. The appellant had a right of appeal to the Board of Review which she had not exercised. She had been a party to the proceedings before the Assistant Commissioner of Agrarian Services, and she very well knew that an order has been made against her.

The second contention raised by Mr. Subasinghe, therefore, also fails.

We dismiss the appeal.

ISMAIL, J.—I agree.

Appeal dismissed.