

1971 Present : Weeramantry, J., and de Kretser,

PUBLIC TRUSTEE, Petitioner, and A. D. J. GUNAWARDANE  
(Chairman, Paddy Lands Board of Review) and 5 others, Respondents

S. C. 468/67, 738/69, 772/69, 773/69—Application for a Mandate in the  
nature of Writs of Certiorari and/or Prohibition

*Paddy Lands (Amendment) Act, No. 61 of 1961—Section 4—Inquiry held there-  
under—Whether it can have any effect on a verdict entered previously under  
s. 21 of original Act.*

A landlord who was charged in the Magistrate's Court in respect of an alleged eviction by him of his tenants in violation of section 4 (9) of the Paddy Lands Act No. 1 of 1958 was acquitted not upon the facts but upon what amounted to a technicality. Thereafter Act No. 61 of 1961 was passed, and a fresh inquiry was held by the Commissioner in terms of section 4 of that Act. The Commissioner arrived at a finding that the landlord had evicted the tenant cultivators. His appeal to the Board of Review failed and, in the present applications for Writs of Certiorari and/or Prohibition, an order was sought to quash the orders of the Commissioner and the Board and also to prohibit further proceedings against the landlord.

*Held*, that section 4 of the amending Act No. 61 of 1961 left unaltered and unaffected the provisions of section 21 of the original Act, so far as the law governing the present case at the time of the event was concerned. Accordingly, inasmuch as the plea of *autrefois acquit* would be available to the landlord, a case was not made out for the issue of Writs of Certiorari and/or Prohibition.

## APPLICATION for Writs of Certiorari and/or Prohibition.

*E. R. S. R. Coomaraswamy*, with *N. S. A. Goonetilleke*, *S. C. B. Waljampxya*, *P. H. Kurukulasooriya* and *N. J. Vilcassim*, for the petitioner in each application.

1st, 2nd, 3rd, 5th and 6th respondents absent and unrepresented in each application.

*Shiva Pasupati*, Senior Crown Counsel, for the 4th respondent in application 468/67.

*N. Sinnatamby*, Crown Counsel, for the 4th respondent in applications 738/69, 772/69 and 773/69.

August 10, 1971. WEERAMANTRY, J.—

There are four matters that have been consolidated for the purpose of this hearing.

In the first of these applications the original petitioner died after making his application to this Court and the Public Trustee was substituted in his place, while in the others the Public Trustee himself came into this Court as legal representative of the deceased.

In each of these cases the original petitioner upon the first application, who was the landlord, has been charged in the Magistrate's Court in respect of an alleged violation of section 4 (9) of the Paddy Lands Act No. 1 of 1958.

In the first case, after consideration of the question whether there had been eviction by the landlord, the landlord was acquitted not upon the facts but upon what amounted, as the Magistrate himself seems to have thought, to a technicality. In view of this acquittal the other three cases were withdrawn. Thereafter Act No. 61 of 1961 was passed introducing by section 4 a provision to the effect that where a person who was the tenant cultivator of any extent of paddy land had been evicted from such extent at any time after the date on which the principal Act came into operation, the Commissioner may hold an inquiry for the purpose of deciding the question whether such person had been evicted from such extent. Sub-section 2 of section 4 provides further that any inquiry held by the Commissioner before the date of commencement of the Act should be deemed to have been duly held under the principal Act and the decision of the Commissioner on such question shall be deemed to be valid.

In view of this statutory provision fresh proceedings were had before the Commissioner and the Commissioner has arrived at a finding that the paddy land owner had evicted the tenant cultivators. The appeal of the petitioners to the Board of Review against this order has been

unsuccessful and in these proceedings an order is sought from this Court quashing the orders of the Commissioner and the Board and also prohibiting further proceedings against the petitioner.

The basis on which these applications have been supported before us by learned Counsel appearing for the petitioner is that the provisions of the amending Act constitute an interference with judicial power, in that although the question whether there had been eviction or not has been decided and disposed of by the Magistrate, the very same matter is now made open to inquiry by a Commissioner.

It would appear, however, that there has been no interference with the proceedings before or with the findings of the learned Magistrate. These remain unaffected, for section 4 merely creates a power in the Commissioner to investigate the question with a view to certain reliefs that follow upon his finding, but leaves unaltered and unaffected the provisions of section 21 of the original Act. This is the section dealing with the procedure before and the powers of the Magistrate's Court, and also with the right of the accused to be heard before the Magistrate makes an order of eviction against him.

One of the powers the amending Act conferred on the Commissioner by section 4 1A(d) is to restore the person evicted to the use and occupation of the extent from which he was evicted and to require every person in occupation to vacate it. In default of compliance with this order the original petitioner in the present case would have to be evicted *in accordance with the provisions of the unaltered section 21*.

There has, in other words, been no attempt so far to interfere with the decision relating to conviction or acquittal entered by the Magistrate's Court in the earlier proceedings. These remain uninterfered with. So far no attempt has been made to take the petitioner to the Magistrate's Court again but should such an attempt be made despite the earlier acquittal, the plea of *autrefois acquit* would be available to the accused. Later amendments to the law, not applicable to the present case, would appear to have deprived accused persons in such proceedings of the right to be heard before the Magistrate makes an order of eviction against them, but such provisions cannot be used to deprive the petitioner in this case of his right to appear before the Magistrate in terms of section 21 and raise the plea of *autrefois*.

Inasmuch as the law governing this matter is the law at the time of the event, it would not be open to the Commissioner in reliance upon any later amendment of the law, not considered in this order, to seek to defeat such rights as the petitioner enjoyed by virtue of the law as it then stood.

In the result, then, there would appear to have been no interference so far with the procedure had before, or the order made by, the Magistrate and we do not think a case has been made out for the issue of a writ.

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In this view of the matter we would dismiss these applications with costs.

DE KRETZER, J.—I agree.

*Applications dismissed.*

