

1946

Present: Wijewardene J.

JAYAWARDHANA, Appellant, and THE ASSISTANT
GOVERNMENT AGENT, PUTTALAM, Respondent.

215—*M. C. Puttalam, 33,019.*

Land Development Ordinance—Order of ejectment—Requirement of registration in case of lands given on permit—Death of permit holder—Does not effect “cancellation” of permit—Land Development Ordinance (Cap. 320), ss. 58 (1), 106–118, 120, 125.

The provisions of section 58 (1) and the allied sections of the Land Development Ordinance in which reference is made to the necessity for registration refer only to lands alienated by grant under the Ordinance and not to lands given on a permit.

There is nothing in the provisions of sections 106–118 of the Land Development Ordinance to indicate that the death of a permit holder effects a “cancellation” of the permit within the meaning of Chapter IX of the Ordinance.

A PPEAL against an order of ejectment made by the Magistrate of Puttalam under section 125 of the Land Development Ordinance (Cap. 320).

Walter Jayewardene for the accused, appellant.

A. C. Alles, C.C., for the Crown.

Cur. adv. vult.

March 26, 1946. WIJEYWARDENE J.—

This is an appeal against an order of ejection made under section 125 of the Land Development Ordinance (Chapter 320 of the Legislative Enactments).

The Assistant Government Agent of Puttalam issued a permit in the prescribed form to one Manuel Perera in 1943 in respect of the land in question for a period of years. Manuel Perera nominated his wife, the accused, as his successor under section 77 of the Ordinance. In October, 1944, the Assistant Government Agent cancelled that nomination under section 82 at the request of Manuel Perera who then nominated his grandson. That nomination was duly endorsed on the permit under section 80. Manuel Perera died in November, 1944. Thereupon, the Assistant Government Agent issued a notice on the accused who was living on the land requesting her to leave the land at the end of June, 1945. On the accused failing to comply with his request the Assistant Government Agent purporting to act under section 120 presented a written report to the Magistrate and obtained the order appealed against.

At the hearing before the Magistrate the only point of law argued on behalf of the accused was that her nomination as the successor of Manuel Perera was not duly cancelled as the document cancelling the nomination was not registered under section 58 (1). That contention is clearly untenable. I agree with the learned Magistrate that the provisions of that section and the allied sections in which reference is made to the necessity for registration refer only to lands alienated by grant under the Ordinance and not to lands given on a permit.

The accused has, however, raised another point of law in the petition of appeal, namely, that the Magistrate had no jurisdiction to make an order against her.

Now section 120 under which the written report in this case was presented refers to a "holding" and requires the Assistant Government Agent to state that *the grant relating to the holding has been cancelled* and that the person named in the report is in unlawful possession or occupation of such holding though served with a notice under section 119. It may also be noted that section 119 empowers the Assistant Government Agent to issue a notice to a person in possession or occupation of a holding after "*the grant of a holding has been cancelled*".

Those sections which refer only to "holdings" (*i.e.*, lands alienated by grant under the Ordinance) are made applicable to lands given on permits by section 128 which reads—

"The provisions of this Chapter (Chapter IX of the Ordinance) shall apply *mutatis mutandis* in a case where any person is in unlawful or unauthorised possession or occupation of Crown land after the cancellation of the permit whereby such land was alienated".

It necessarily follows from the sections I have mentioned that the Magistrate would not have the special jurisdiction conferred on him to make an order of ejection in the case of lands given on a permit

unless where (a) the permit had been cancelled, and (b) the notice had been given to the party in unlawful possession or occupation after such cancellation.

Now there is not the slightest suggestion in this case that the permit issued to Manuel Perera had been cancelled. The cancellation of permits is referred to in sections 106–118, but there is nothing in those provisions to indicate that the death of a permit holder is regarded as effecting a “cancellation” of the permit within the meaning of Chapter IX. An examination of section 124 of the Ordinance confirms the opinion I have expressed.

I would, therefore, vacate the order of the Magistrate as having been made without jurisdiction.

Appeal allowed.
