

1961

Present : T. S. Fernando, J.

K. PUNCHI BANDA, Appellant, and THE GOVERNMENT AGENT,  
KANDY, Respondent

*S. C. 595 of 1961—M. C. Teldeniya, 4,005*

*Land Development Ordinance (Cap. 320)—Land held under a permit—Distinction between cancellation and surrender of permit—Order of ejectment—Not available in case of surrender—Sections 106, 119, 125, 128.*

The surrender of a land held on permit under the Land Development Ordinance does not mean the same thing as cancellation of the permit. Where a land has been surrendered to the Crown by the permit holder, the Government Agent is not entitled to invoke the powers of the Magistrate's Court under section 125 of the Ordinance for the purpose of obtaining an order of ejectment. In such a case the Crown must seek its ordinary remedy in a civil court.

**A**PPEAL from an order of the Magistrate's Court, Teldeniya.

*M. S. M. Nazeem*, for the appellant.

*D. W. Abeykoon*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

October 17, 1961. T. S. FERNANDO, J.

The Government Agent of the Kandy District moved the Magistrate's Court on October 29th, 1959, for the purpose of obtaining an order of ejectment against the appellant whom he alleged had failed to vacate a holding under the Land Development Ordinance (Cap. 320) although served with notice in terms of section 119 of that Ordinance to do so. It would appear that a permit in respect of this holding had been issued to one Palingu Menika, but that the latter had surrendered the land to the Crown.

Section 119 read with section 128 of the Land Development Ordinance permits the Government Agent to issue a notice in terms of that section on a person in occupation of a holding where a permit in respect of that holding has been cancelled. There is no evidence that the permit issued to Palingu Menika has been cancelled; all the evidence indicates that the land was surrendered voluntarily by Palingu Menika and that no cancellation has taken place. It has been suggested that surrender means the same thing as cancellation. I am unable to agree with this

suggestion. Although the learned Magistrate states that there is ample authority for the proposition that "surrender" is tantamount to "cancellation", Crown Counsel appearing for the Government Agent has not been able to refer me to any such authority. I can myself discover nothing in the Ordinance itself indicating that a voluntary surrender such as that which has been made in this case has the same effect in law as a cancellation of a permit. It will be noted that section 106 indicates that a failure by a permit holder to observe a condition of the permit is a pre-requisite to a cancellation of that permit. I am satisfied that in the circumstances shown in the case under appeal the Government Agent was not entitled to invoke the powers of the Magistrate's Court under section 125 of the Ordinance. The Crown must seek in this case its ordinary remedy in a civil court.

I set aside the order purporting to have been made under section 125 of the Ordinance ejecting the appellant from the land in question.

*Order set aside.*

