

1968 Present : Samerawickrame, J., and Weeramantry, J.

S. D. KULATUNGA, Petitioner, and CULTIVATION COMMITTEE and 2 others, Respondents

S. C. 409/67—*In the matter of an Application for the issue of a Mandate in the nature of Writ of Certiorari and Mandamus*

Paddy Lands Register—Insertion of new names thereon as tenant-cultivators—Right of owner-cultivator to be heard in opposition—Natural justice—Right of appeal—Circumstances when it may be superseded by remedy of Certiorari—Right of inspection of Paddy Lands Register—Paddy Lands Act, No. 1 of 1958, as amended by Acts Nos. 30 of 1958, 61 of 1961 and 11 of 1964, s. 35—Paddy Lands (No. 3) Regulations 26, 27, 28, 29, 32, 35.

Before a person's name can be inserted for the first time in the Paddy Lands Register as a tenant-cultivator of a paddy field under the Paddy Lands Act, the person whose name appears as the owner-cultivator on the Register is entitled to be heard in opposition after due and sufficient notice, such as Regulations 26 and 35 of the Paddy Lands (No. 3) Regulations of 1964 contemplate, is given to him by the Cultivation Committee that a name in the column provided for tenant-cultivators would be considered.

Where a person's name is inserted as tenant-cultivator without due notice to the owner-cultivator, the remedy of *Certiorari* is available to the owner-cultivator. In such a case, the appellate procedure provided by Regulation 32 is inapplicable.

According to Regulation 27 the Paddy Lands Register is available for inspection by any person free of charge.

APPPLICATION for a writ of *certiorari*.

Nimal Senanayake, for the petitioner.

Hannan Ismail, for the 1st respondent.

E. B. Vannitamby, for the 2nd and 3rd respondents.

Cur. adv. vult.

October 14, 1968. WEERAMANTRY, J.—

The petitioner is the owner of a paddy field known as Pathana Aluthkele Kumbura about 10 acres in extent. From the time the Paddy Lands Act came into operation in the area in which this field is situate, that is from 1958, the petitioner has been the owner-cultivator of this field and has been registered as such for the years 1964, 1965 and 1966.

The 1st respondent is the Cultivation Committee of the area and the 2nd and 3rd respondents are persons whose names have now been inserted in the Paddy Lands Register of the 1st respondent committee for

the year 1967 as tenant-cultivators of this field. This Register is required to be maintained in terms of section 35 of the Paddy Lands Act, No. 1 of 1958, as amended by Acts No. 30 of 1958, 61 of 1961 and 11 of 1964. The duty of maintaining this Register lies upon the cultivation committee for the area and the manner of preparation and revision of this Register is laid down by Regulations made under the Paddy Lands Act and appearing in *Government Gazette* No. 14,230 of 20th November 1964.

The petitioner contends that any alteration or amendment to the Paddy Lands Register is a judicial or quasi-judicial act which the committee can perform only in good faith and in conformity with the statutory provisions relating thereto and with the rules of natural justice. In the circumstances of this case it is the petitioner's position that the insertion by the 1st respondent committee of the names of the 2nd and 3rd respondents has been effected otherwise than in conformity with the statutory provisions governing the procedure for alteration or amendment of the register, without due notice to the petitioner and *mala fide*. On the basis of these contentions the petitioner seeks a mandate in the nature of a Writ of *Certiorari* quashing the decision of the Committee to insert the names of the 2nd and 3rd respondents as tenant-cultivators for the year 1967.

The petitioner also sought in his petition a Writ of *Mandamus* directing the 1st respondent committee to enter the name of the petitioner as owner-cultivator of the field for the year 1967. This latter prayer was based on an assumption, since found to be incorrect, that the name of the petitioner as owner-cultivator had been omitted from the Register for 1967. It would appear, however, that the name of the petitioner has not been so omitted, and it will not therefore be necessary to consider further the petitioner's request for a Writ of *Mandamus*.

The 2nd and 3rd respondents do not in their affidavits deny that in the years 1964, 1965 and 1966 the petitioner was registered as the owner-cultivator of the land in question nor is there a denial of this averment in the affidavit filed by the Hony. Secretary of the Cultivation Committee. Indeed in the application of the 2nd and 3rd respondents to the Cultivation Committee it is significant that there is reference time and again to the land as belonging to the petitioner. Furthermore it would appear from the evidence of the 2nd respondent at an inquiry on 23rd April 1967 held by the Assistant Commissioner of Agrarian Services, that a tractor, fertilisers, weedicide and cash had been obtained from the petitioner for the purpose of cultivating this field in December 1966.

It is, however, the position of the 2nd and 3rd respondents that their names were properly entered as tenant-cultivators for the year 1967 and that this registration was *bona fide* and regularly effected upon an application made by them on 4th January 1967.

The affidavit of the secretary of the 1st respondent committee states that as required by Regulation 26 of the Paddy Lands (No. 3) Regulations, 1964, due notice was given on or about 11th December 1966 that the

register for the year 1967 had been prepared and was open for inspection and that any person may between 12th December 1966 and 12th January 1967 apply in writing for any amendment in the register. The affidavit states further that on 1st January 1967 the 1st respondent committee by beat of tom tom and by affixing written notifications at prominent places within its area of authority duly gave notice that a meeting of the 1st respondent would be held at 9.00 a.m. on 14th January 1967 and requested all cultivators and owners to be present at this meeting at which all applications and objections regarding amendments in the Register would be considered and dealt with.

The application of the 2nd and 3rd respondents to have their names entered as tenant-cultivators was considered at this meeting and in the absence of any objections the committee decided to insert the names of these respondents as tenant-cultivators.

In the circumstances referred to in his affidavit the Secretary of the 1st respondent committee affirmed that the committee's decision was *bona fide* and made without bias or fraud.

It is clear that the rights of the petitioner, admittedly an owner-cultivator in 1964, 1965 and 1966, would be substantially affected by the inclusion of the names of the 2nd and 3rd respondents as tenant-cultivators for that year. This was therefore a matter on which he was entitled to due notice and entitled to be heard before any alteration, detrimental to his interests, was made.

The simple question before us therefore is whether in regard to this alteration due notice was given to the petitioner such as the regulations contemplate and such as was sufficient to enable him to appear at the meeting and register his objections.

What would appear from the affidavit of the Secretary of the 1st respondent committee is merely that on 1st January 1967 the meeting scheduled for 14th January was proclaimed by beat of tom tom and by affixing written notifications at prominent places, to the effect that all applications and objections regarding amendments would be considered and dealt with at that meeting.

It should further be observed that notice of this meeting, a copy of which has been produced marked 1R1, merely states in general terms that one of the objects of the meeting is to see whether the Register should be amended for the year 1967 but makes no mention of any application by the 2nd and 3rd respondents in respect of this field.

Such a notification could not constitute an intimation to the petitioner that an application of the 2nd and 3rd respondents dated 4th January, which in fact had not yet been received at the time of such intimation, would be considered in regard to the particular field in question or that such an application would be one to have their names registered as tenant-cultivators.

There was an attempt by the Secretary in his evidence before the Assistant Commissioner of Agrarian Services at the inquiry of 23rd April 1967, to make out that the petitioner had been given special notice of this meeting, for he stated that the petitioner's *gambarakaraya* had been informed verbally of the meeting. This position is not borne out, however by any averments in the counter affidavits filed by the respondents, and constitutes no basis on which this court can take the view that any special intimation of this meeting was given to the petitioner.

Even, therefore, if one were to assume that the proclamation of the meeting by beat of tom tom and by the affixing of notices must be deemed sufficient notice to the petitioner of the holding of the meeting, there is still a total failure on the part of the Cultivation Committee to inform the petitioner that an application to insert names in the column provided for tenant-cultivators would be considered.

The petitioner may well in these circumstances have absented himself from the meeting, for the register which had been prepared and was open for inspection could not possibly have contained the names of the 2nd and 3rd respondents in the column provided for tenant-cultivators, their application to have their names so inserted having been as already observed, subsequent in point of time to the proclamation by beat of tom tom and by affixing of notices.

There has thus been a failure of natural justice in this matter and a denial to the petitioner of an opportunity of being heard in opposition to the proposed alteration which alteration would necessarily result in a diminution of his rights. The petitioner must therefore be restored to the position he enjoyed prior to the insertion of the names of the 2nd and 3rd respondents.

It is urged on behalf of the respondents that a procedure for obtaining redress is available to the petitioner namely an appeal to the Commissioner in terms of Regulation 32, against the decision of the Cultivation Committee.

However, it would appear from a perusal of this Regulation that the procedure provided therein is not available to a person placed in the position of the petitioner in this case. Regulation 32 is confined to appeals from decisions on applications under Regulations 28 and 29. Regulation 28 deals with applications for amendment of the Register and is therefore applicable only to a person seeking amendment. Regulation 29 provides that a person whose name appears in the Register may object to the name of any other person appearing therein within a period of one month from the date of the notice given by the Cultivation Committee under Regulation 26. The notice given by the Cultivation Committee under Regulation 26 was, as hereinbefore observed, a notice given prior to the application by the 2nd and 3rd respondents to have their names inserted, and there was at that stage no name appearing in that Register to which the petitioner had any objection. The petitioner was thus not a person who could have made an application under Regulation 29.

Moreover the appellate procedure provided by Regulation 32 would appear to be inapplicable in any event in a case where there has been a failure of natural justice and an omission to give a person notice of an inquiry affecting his rights. A person may in the circumstances be unaware for a considerable period that an order has been made against him. A requirement of compliance with Regulation 32 which specifies a time limit of 10 days for appeal would appear to be wholly unreasonable where there is a lapse of time between the decision and the aggrieved party's knowledge thereof.

It is thus clear that even if an appeal to the Commissioner should in the generality of cases be a pre-requisite to an application to this Court, Regulation 32 becomes inapplicable to the petitioner in the circumstances of this case, and the existence of such an appellate procedure does not stand in the way of the petitioner's application to this Court for redress.

Much material has been placed before us in the affidavit of the petitioner in support of his contention that the alteration of the Register was fraudulently and collusively effected by the 2nd and 3rd respondents and the Cultivation Committee. It is not necessary for the purpose of this application for us to express an opinion on these allegations, for in the light of our earlier observations the alterations made by the Cultivation Committee cannot be permitted to stand. It will suffice for present purposes to observe that if in fact there is truth in the petitioner's contention (and we have no reason to think otherwise in view of the pains to which he has apparently been put in obtaining a copy of the relevant extract) that the officials of the Cultivation Committee have not permitted him access to the Register, this is conduct of which we strongly disapprove. No secrecy attaches to these Registers and there can be no justification for withholding them from an owner who desires their perusal. We would also draw attention in this connection to Regulation 27 which expressly states that the Register shall be available for inspection by any person free of charge.

A Writ of *Certiorari* will therefore issue quashing the decision of the 1st respondent to insert the names of the 2nd and 3rd respondents as tenant-cultivators.

The decision we now make must not be regarded as being in any way a determination upon the respective rights of the petitioner or the 2nd or 3rd respondents in regard to this land for our decision merely restores the position in existence prior to the alteration which is the subject of complaint.

In order to preserve the rights of parties anterior to these alterations we also make order that the 2nd and 3rd respondents will have the benefit of the application they have already made to the Cultivation Committee and that despite the time that has elapsed since their application they may proceed upon the basis thereof. It will not be open at such proceedings for the petitioner to urge against them that they are out of

time in making or prosecuting their application. All other positions in law or in fact which would have been available to the parties upon the original application will continue to be available to them at the resumed proceedings.

We make this order now even though it relates to the Register for the year 1967 for the reason that the entries in the Register for 1967 will not be without effect on the legal position and rights of parties in respect of subsequent years.

We make no order as to the costs of these proceedings.

SAMERAWICKRAME, J.—I agree.

Sent back for further proceedings.
