

1957

Present: Sinnetaimby, J.

S. MUTTIAH, Appellant, and COMMISSIONER FOR
REGISTRATION OF INDIAN AND PAKIS-
TANI RESIDENTS, Respondent

S. C. 53—Citizenship Case No. R/O. 4,509

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1919—Notice under sections 9 (1) and 20—Procedure for service.

Where a notice issued under section 9 (1) of the Indian and Pakistan Residents (Citizenship) Act is returned unserved and the Commissioner subsequently becomes aware, within three months from the date of the notice, that the applicant has changed his address, the applicant should be informed of the fact that notice under section 9 (1) had been sent to him and had been returned unserved.

APPPEAL under the Indian and Pakistani Residents (Citizenship) Act.

S. P. Amarasingham, for the applicant-appellant.

V. G. B. Perera, Crown Counsel, for the respondent.

April 2, 1957. SINNETAMBY, J.—

In this case the applicant in the application form had given his address as Gonakelle Bazaar, Kandapola. Subsequently, he wrote a letter to the Deputy Commissioner on the 4th May, 1953, asking the Deputy Commissioner to note his change of address as 3, High Forest, Maturata. This was duly noted on the application form.

After the Investigating Officer's report, the Deputy Commissioner issued a notice under Section 9 (1) informing the applicant that he had failed to prove that he was resident in Ceylon for certain periods and that he had failed to establish certain other requirements. This notice which was dated 28th May, 1956, was addressed to High Forest, Maturata. It was posted on the 30th May and returned on the 14th June, according to the date stamp.

Under Section 9 (2), where no cause is shown to the contrary within a period of three months, the Deputy Commissioner is obliged to reject the application. Three months from the date of notice would be the 28th August, but no action was taken on that day. Prior to that, however, on the 4th July, the applicant submitted to the same Deputy Commissioner quoting the same number under which his application is registered, viz., R/O. 4,509, an application of an identity certificate to enable him to proceed to India. This application is in the file and was accompanied by a letter dated 2nd July signed by the applicant. This letter too has the application No. R/O. 4,509 quoted.

It would appear that on receipt of this application, the Deputy Commissioner would have received some kind of intimation that the address in Ceylon of the applicant was on that day, once again, Gonakelle Bazaar, Kandapola. That is the address given in the appropriate cage.

On the 26th September, the applicant submitted another letter which bears a date stamp 27th February as being the date it was received in the Deputy Commissioner's office, making a further request for his travel documents. In that letter, he states that in July 1956 he came personally with his wife to his office and filled up the form and identity certificates giving his permanent address as Gonakelle Bazaar, Kandapola. It would appear, according to that letter, that on the 24th September, he had called for these identity certificates, when he was informed that the identity certificates could not have been issued as he had not replied to the notice under Section 9 (1) sent to High Forest. By that date, the three months had elapsed but on the date on which

the application for identity certificates, which appears at page 63 of the file, was filed, the original address mentioned was within the three months.

Section 20 requires that notice should be served personally : that is the kind of service which the section contemplates ; but it provides also for a case in which it is not possible to serve notice personally, by enacting that a notice shall be deemed to have been served if it is sent by registered post to the last known place of abode.

Notice was sent under Section 9 (1) in this case to the last known place of abode at the time it was issued. The main object of Section 20 being to effect personal service, it seems to me that once it was discovered that the appellant had changed his address, he should have been informed of the fact that notice under Section 9 (1) had been sent to him, and had been returned unserved on the 19th June. That notice unserved was in the file when the applicant made his application for the identity certificates on the 4th July, 1956.

The object of serving the notice, as stated in Section 9 (1), is to give to the applicant an opportunity of showing cause to the contrary. If, therefore, it was known that at or about the time of the issue of the notice the applicant had changed his address and the notice had not been served and was returned unserved, it could, had appropriate steps been taken, have been communicated to him within the three months. Natural justice demands that the applicant should receive the notice ; otherwise he is denied the opportunity of showing cause, which is the main object of issuing the notice under Section 9 (1).

In this case, one cannot blame the Deputy Commissioner for not issuing the notice to Gonakelle Bazaar, in view of the letter notifying the change of address dated 4th May, but having regard to all the circumstances in this case, I think it is a case in which the applicant should be given an opportunity of showing cause to the contrary.

I set aside the order made by the Deputy Commissioner under Section 9 (2) and remit the case back to him so that he may issue fresh notice under Section 9 (1) and take thereafter appropriate steps as prescribed by law. This notice should be served on the applicant to the address he originally gave, viz., Gonakelle Bazaar. In all these circumstances, I do not propose to make any order as to costs.

Order set aside.