

1966 Present : **H. N. G. Fernando, S.P.J., Sri Skanda Rajah, J.,
and G. P. A. Silva, J.**

D. M. ARIYARATNA (Assistant Commissioner of Agrarian Services), Appellant,
and **S. EDWIN**, Respondent

S. C. 642 of 1963-M. C. Kurunegala, 13435

Paddy Lands Act-Sections 3 (2) and 21-Meaning of word " evict " in section 3 (2),

A person cannot be said to have been " evicted " within the meaning of section 3 (2) of the Paddy Lands Act if he either gave up possession of the paddy land in question or else did not take steps to resume possession after his contract or agreement was terminated. In such a case the Commissioner has no jurisdiction to exercise the powers conferred on him by section 3 (2).

APPEAL from an order of the Magistrate's Court, Kurunegala.

H. Deheragoda, Senior Crown Counsel, with E. S. Wanasundere and W. K. Premaratne, Crown Counsel, for appellant.

S. Sharvananda, with M. T. M. Sivardeen and P. Thuraiappah, for the respondent.

May 29, 1966. **H. N. G. FERNANDO, S.P.J.-**

This case has been referred to the present bench in view of the fact that the Magistrate, in considering an application made to him under section 21 of the Paddy Lands Act, formed the opinion that the powers conferred on the Commissioner of Agrarian Services by section 3 (2) of the Act constituted judicial powers. The present appeal is by the Attorney General against the Magistrate's order based on that opinion.

We find however that in any event this is not a case in which the Commissioner had jurisdiction to exercise the powers purported to be conferred on him by section 3 (2). That section applies to a case where a tenant cultivator was evicted from a paddy land between April 12th 1956 and February 1st 1958, the latter being the date of commencement of the Act. The ordinary meaning of "Evict" in our opinion means to

dispossess by due process of law or else by force. In the present case the report made to the Magistrate under section 21 stated that the previous tenant had been " evicted " from a paddy land, but reference to the facts recorded by the Commissioner shows that there had neither been eviction by force nor eviction by judicial process. The former tenant had merely stated in evidence that he was asked not to cultivate for a further season and that he did not cultivate. Section 3 (2) does not in our opinion apply to a case where a tenant either gives up possession or else does not take steps to resume possession after his contract or agreement is terminated. For these reasons we hold that the learned Magistrate rightly dismissed the application made to him under section 21 of the Paddy Lands Act. The question whether the Commissioner exercises

judicial power under section 3 of the Act does not arise. The appeal is dismissed.

SRI SKANDA RAJAH, J.-I agree.

G. P. A. SILVA, J.-I agree.

Appeal dismissed.

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