

Counsel: Buddika Gamage for the Appellant.
Sabrina Ahamed, S.C., for the Respondents.

Decided on: 03.12.2019

Mahinda Samayawardhena, J.

The appellant filed this appeal seeking to set aside the order of the High Court dated 28.10.2003, which affirmed the order of the Magistrate's Court dated 15.03.2001 marked P8.

P8 order was made by the Magistrate's Court upon an application made under section 8(1) of the Agrarian Development Act, No. 46 of 2000, by the Commissioner of Agrarian Development, seeking an eviction order of the appellant from the paddyland in question, due to non-compliance with the orders made by the Commissioner marked P6 and P7.

P6 order relates to the rent (the number of bushels of paddy) payable by the appellant as the tenant cultivator to the 2nd respondent being the landlord. This order was made against the appellant after an inquiry.

As the P6 order was not complied with, the Commissioner sent P7 to the appellant informing him of the termination of the tenant cultivatorship and directing him to handover possession of the paddyland within 30 days thereof to the landlord. The appellant refused to comply with P7 order as well.

It is against this backdrop the Commissioner sought an order from the Magistrate's Court under section 8(1) of the said Act to evict the appellant from the paddyland.

Section 8(1) of the Act reads as follows:

Where any person who has been ordered under this Act, by the Commissioner-General to vacate any extent of agricultural land, fails to comply with such order, the Commissioner-General or any other person authorised in that behalf by the Commissioner-General may present to the Magistrate's Court within whose local jurisdiction such extent wholly or mainly lies, a written report,

- (a) setting out the nature of such order and the person to whom it was issued, describing the extent of land to which such order relates;*
- (b) stating that the person who has been ordered to vacate has failed to so vacate such extent of land; and*
- (c) praying for an order to evict such person and all other persons in occupation of such extent of land from such extent, and stating the name of the person to whom delivery of possession of such extent should be made.*

Section 8(2) reads as follows:

Where a written report is presented to a Magistrate's Court under subsection (1), such court shall direct the Fiscal or peace officer to forthwith evict the person specified in such report and all other persons in occupation of the extent of agricultural land specified in the order and to deliver possession of such extent to the person mentioned in such report as the person to whom delivery of possession of such extent should be made.

P8 order, which is being challenged in this appeal, is a ministerial order that the Magistrate's Court is required to make under the Act. When a written report is filed in the Magistrate's Court under section 8(1) of the Act, there is no necessity for the Court to issue Notice on the defaulter to show cause or otherwise. If the report has been filed in compliance with the requirements of section 8(1), the Magistrate has no option but to make the order sought for.

The appellant should have challenged not the order marked P8, but the orders marked P6 and P7, which preceded it, by invoking the writ jurisdiction of this Court. This has not been done.

I dismiss the appeal but without costs.

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal

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