

## SUPREME COURT.

MA THI AND TWO OTHERS (APPLICANTS)

v.

THE TAPUN VILLAGE AGRICULTURAL  
BOARD AND TWO OTHERS (RESPONDENTS).\*† S.C.  
1948

Dec. 6.

*Disposal of Tenancies Rules—Board deciding by a majority of the members—  
Interference when justified by a writ of certiorari—Rule 10 (2).*

An order to the Tapun Village Agricultural Board allotting 13.53 acres to Respondents 2 and 3 was challenged by a writ of *certiorari* on the ground that the order was not made by the Board as a whole sitting together but by a majority and that the original tenants were entitled to continue to cultivate under Rule 10 (2).

*Held* : If the minority in a Board was not given an opportunity of attending the deliberations or expressing its views before the Board as a whole came to its decision the proceedings might have to be quashed. But when minority was not so deprived of the opportunity of attending and the records indicate that the dissentient members were present at the deliberations the mere fact that the minority disagreed with the view of the majority is no ground to hold that the order of the majority was invalid.

*Held further* : Under Rule 10, clause (2) of the Disposal of Tenancies Rules, 1948, the Board if it has sufficient ground to believe that the previous tenants would be unable to cultivate such lands may withdraw the lands from the occupation of such tenants. The applicant in this case is a salaried officer in the service of the Government and lives at a distance from the lands and his wife is a woman with small children, the conclusion of the Board that the applicant and his wife would not be able to cultivate such land was not unreasonable. The Supreme Court will not interfere with such findings of fact.

*Ba Maung* for the applicants.

*Ba Sein* (Government Advocate) for the respondents.

The judgment of the Bench was delivered by

MR. JUSTICE E MAUNG.—This application must be dismissed.

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\* Civil Misc. Application No. 43 of 1948.

† Before SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE E MAUNG and MR JUSTICE KYAW MYINT.

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The 2nd and 3rd applicants are husband and wife and the 1st applicant is a sister of the 2nd applicant.

It is not disputed that in the agricultural season 1947-48 the 2nd and 3rd applicants worked altogether 29.59 acres of paddy land, of which 16.06 acres belong to them; the other 13.53 acres, however, are owned by the 1st applicant and were worked by the 2nd and 3rd applicants as the 1st applicant's tenants.

For the agricultural season 1948-49 the 2nd and 3rd applicants were without any interference allowed to work 16.06 acres belonging to themselves, but the 13.53 acres belonging to the 1st applicant were allotted to the 2nd and 3rd respondents, in pursuance of the Disposal of Tenancies Rules, by the Tapun Village Agricultural Board. It is this order of the Board that we are asked to quash in these proceedings.

The first point taken before us on behalf of the applicants is that the allotment of the disputed area to the 2nd and 3rd respondents was not made by the Board as a whole sitting together but was made by a majority of the members of the Board, the dissentients not being present at the time the decision was made. It may well be that if the minority was never given an opportunity of attending the deliberations or expressing its views before the Board as a whole came to its decision, the proceedings would not be regular and might have to be quashed. But it is not clear from the affidavits of the three members of the Board, who did not sign the formal order allotting the disputed area to the 2nd and 3rd respondents, that they were deprived of the opportunity of attending the deliberations of the Board or of expressing their views. All that these three gentlemen claim is that they never agreed to the disputed area being allotted to the 2nd and 3rd respondents and that they recommended the 2nd and 3rd applicants be re-allotted the disputed area

for the agricultural season 1948-49. In fact, the proceedings of the Board—though they cannot be said to be as clear as we could have wished—indicate that the dissentient members were present at the deliberations of the Board and had recorded their dissent. Even in the reply affidavit of the 2nd applicant the following statement appears :—

“I may add that only the representatives of the . . . . . on the Village Agricultural Board suggested that my sister's lands be taken away from my wife and me. When the President and two other members of the Board opposed the suggestion, the representatives discontinued to come to the President's house (in which up to that time meetings of the Board were held) and continued the meetings at the *dak* bungalow with the President and the two aforesaid members. It was at the latter place that the order was passed. I do not know that the order was a written order till Thakin Ohn Myint produced it in this Court.”

The second line of attack against the order of the Board is that under Rule 7 of the Disposal of Tenancies Rules, 1948, the 2nd and 3rd applicants, as being tenants who were in occupation of the agricultural land which they cultivated in the agricultural season 1947-48, were entitled to continue to cultivate the disputed land for the agricultural season 1948-49. But this argument overlooks Rule 10 (2) under which the Board, if it has sufficient grounds to believe that such tenants would be unable to cultivate such lands, may withdraw the lands from the occupation of such tenants. In this case it cannot be said that the grounds on which the Board claimed that it arrived at its conclusion are baseless. The Board states that the 2nd applicant is a salaried officer in the service of the Government and living at a distance from the paddy lands in dispute. It is true that his wife, the 3rd applicant, lives in the area where the paddy lands are

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but the Board took the view—and in our opinion not unreasonably—that a woman with small children as the 3rd applicant is, would be unable to cultivate the disputed area in addition to the 16 odd acres which she is allowed to continue to hold in the agricultural season 1948-49.

In these circumstances the application fails and is rejected with costs. Advocate's fees two gold mohurs.