

## SUPREME COURT.

PAPPAMMAL (APPLICANT)

v.

THE TADACHAUNG VILLAGE AGRICULTURAL  
COMMITTEE AND EIGHT OTHERS (RESPONDENTS).\*† S.C.  
1948  
Dec. 6.

*Application for writ of certiorari—Rule 4, Disposal of Tenancies Rules, 1948—  
Meaning of expression “cultivated with his own hands”—Interference.*

*Held*: That the proviso to Rule 4 of Disposal of Tenancies Rules, 1948, gives discretion to the Village Agricultural Committee to grant a landholder more than 50 acres of land for his own cultivation. Where the Committee after taking into consideration all matters before it exercises that discretion in good faith, the Supreme Court cannot interfere with the exercise of such discretion by issuing a writ of *certiorari*.

*Semle*: To interpret the words “who cultivated agricultural lands in his own possession with his own hands as his principal means of subsistence” as used in proviso to Rule 4 of Disposal of Tenancies Rules, 1948, as embracing a person who has appointed an agent and who by that agent supervises the working of lands, seems to be a dangerous stretching of the words.

*Hla Gyaw* for the applicant.

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

The judgment of the Bench was delivered by

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

The applicant is the owner of 270 acres approximately of paddy land in Twante Township. Of these 270 acres, 160 acres are in the occupation of her own tenants. She now desires the order of the Tadachaung Village Agricultural Committee letting out 50·89 acres out of the remaining 110 acres to the 2nd to 9th respondents quashed by this Court in exercise of its powers under section 25 of the Constitution. It is admitted by her that she is allowed to remain in occupation of the other 60 acres or so.

\* Civil Misc. Application No. 39 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 applicant's case is based on the proviso to Rule 4 of the Disposal of Tenancies Rules, 1948, made by the President in exercise of the powers conferred under section 5 of the Disposal of Tenancies Act, 1948. She says that she has been and is a landholder who cultivated agricultural land in her possession with her own hands as her principal means of subsistence in the agricultural season 1947-48. She claims accordingly that the Agricultural Committee should have exercised in her favour the discretion invested in them by the proviso to Rule 4 and permitted her to cultivate for the year 1948-49, 100 acres of agricultural land out of the 270 belonging to her.

The respondent Committee questions her statement that she is a person who cultivated the agricultural land in her possession with her own hands as her principal means of subsistence in the agricultural season 1947-48. The Committee claims that the applicant is in fact an absentee landholder residing at present in India. It is said on behalf of the respondent Committee that the Committee did not interfere with the applicant's possession through her agent of nearly 60 acres out of the 270 acres as the Committee found that in that area there are standing some buildings belonging to the applicant and used for agricultural purposes, even though she would not be strictly entitled to these acres under the Disposal of Tenancies Act and the Rules thereunder.

It is to be noted that the application to the respondent Committee for permission to work the balance of 270 acres after allotment to her own tenants of 160 acres, was not made by the applicant herself; at the time the application was made she was away in India. It was made on her behalf by a person who claimed to be her agent. The application before this Court is also not made by her personally; it is made through another agent of hers and it is conceded by that agent that the

applicant is at present away in India. He, however, seeks to explain her absence in India as being a temporary visit to her relatives.

The learned counsel for the applicant seeks to interpret the words "who cultivated agricultural land in his possession with his own hands as his principal means of subsistence in the agricultural season 1947-48" in the proviso to Rule 4 of the Disposal of Tenancies Rules, 1948, as embracing a person who has appointed an agent and who by that agent is supervising the working of the land. It appears to us to be a dangerous stretching of the meaning of the words. However, it is not necessary to consider this point further in this case. It will suffice for the disposal of this case to bear in mind that the proviso to Rule 4 merely gives a discretion to the Agricultural Committee to grant to a landholder more than 50 acres which, under the main part of the rule, he or she is entitled as of right. If the applicant had also been denied the 60 acres of which the Committee allowed her to remain in possession, it may be that we would have to consider the question whether a person away in India working through an agent in Burma can be said to come within the meaning of the words "to cultivate with his own hands." In this case, however, it is only the exercise of the discretion vested in the Committee that is being challenged. No materials have been placed before us from which it can be reasonably held that the discretion has been exercised improperly or dishonestly. From the materials before us it is clear that the respondent Committee exercised the discretion vested in it in good faith and after taking into consideration all the materials placed before it.

The application therefore stands rejected with costs. The applicant will pay the costs of the respondent Committee. Advocate's fees five gold mohurs.

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