

SUPREME COURT.

U PO SU (APPLICANT)

v.

THE THAYAGON VILLAGE AGRICULTURAL
COMMITTEE AND TWO OTHERS (RESPONDENTS).*† S.C.
1948

Dec. 13.

Disposal of Tenancies Act, 1948, s. 3, proviso (a)—Disposal by the Committee to a member—Principles of natural justice—Writ of certiorari.

The applicant claimed he was a *bona fide* agriculturist who cultivated his lands with his own hands as his principal means of subsistence. The land was taken away and granted to a member of the Agricultural Committee which made the allotment.

Held : A person may be engaged in the cultivation of lands with his own hands as his principal means of subsistence even though he has the assistance of other labourers. Consequently the Agricultural Board exceeded its jurisdiction in taking away the land from his possession.

Held further : The allotment of one of the lands to a person who was a member of the Agricultural Committee is against the well established principle of natural justice that no man can be a judge in his own cause and the Supreme Court will quash such proceedings.

*Thein Moun*g for the applicant.

Ba Sein (Government Advocate) for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE KYAW MYINT.—We have heard learned counsel both in support of the application and on behalf of the respondents and it is clear that the rule *nisi* in this case must be made absolute.

The applicant is the owner of the two disputed pieces of land. His case is that, in addition to being the owner of these two pieces of land, he is an agriculturist who works these lands with his own hands as his principal means of subsistence and that, as his total holding does not exceed fifty acres, he is in any event

* Civil Misc. Application No. 46 of 1948.

† Before MR. JUSTICE E MAUNG, and MR. JUSTICE KYAW MYINT and U ON PE, J.

entitled under proviso (a) to section 3 of the Disposal of Tenancies Act, 1948, to continue in possession of the disputed pieces of land.

In paragraph 4 of his affidavit the applicant definitely states :

"I say that I am the *bona fide* agriculturist who cultivate his lands with his own hands as his principal means of subsistence."

To that allegation U Chit Tee, the President of the 1st respondent Board, replies :—

"With regard to paragraph 4, this deponent submits that U Po Su superintends the cultivation of his lands. He was allotted the areas in (a) and (c) specified in paragraph 1 of his affidavit, in accordance with Instruction 6 (a)."

It is clear therefore that the allegation of the applicant that he is a person engaged in the cultivation of the lands with his own hands as his principal means of subsistence stands unchallenged, for it is not necessary that a person working with his own hands should not have the assistance of other labourers. That being so it is clear that the 1st respondent Board exceeded its jurisdiction in taking away from the applicant the disputed areas and allotting them to the 2nd and 3rd respondents.

Further, the allotment of one of the two pieces of land was made to a person who was a member of the Agricultural Committee which made the allotment. It is a well established principle of natural justice that no man can be a judge in his own cause. On that ground also the proceedings of the 1st respondent Committee are vitiated.

The application is allowed. The proceedings of the Thayagon Village Agricultural Committee allotting the disputed pieces of land to the 2nd and 3rd respondents are quashed with costs. Advocate's fees five gold mohurs.

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