

## SUPREME COURT.

U KYAI (APPLICANT)

v.

KYWE TAI VILLAGE AGRICULTURAL  
COMMITTEE AND TWENTY OTHERS (RESPONDENTS).\*† S.C.  
1949

Feb. 3.

*Upper Burma Land Revenue Regulation, 1889—S. 4 (1) (2), 5 23 (c) and 25 (c)—Occupation of State land—Myenu land—How and when occupant can be ejected—Disposal of Tenancies Act, 1948—How far can modify the Upper Burma Land Revenue Regulation.*

*Held*: A Village Agricultural Committee appointed under Disposal of Tenancies Act, 1948, is not a Revenue authority within the meaning of s. 4 (i) of the Upper Burma Land Revenue Regulation, 1889, nor is it authorized by the President to exercise powers of a Revenue authority within s. 5 of the Regulation. When a signal order is issued by the Government to the Collector to entrust to the Village Agricultural Committee the power of distributing *myenu* lands in accordance with the principle of Direction 41 of Land Revenue Manual, such signal order cannot take the place of appointments under ss. 4 and 5 of the Upper Burma Land Revenue Regulation.

That where a Cultivator has held *myenu* lands paying land revenue for some years, he has a right to occupy such lands except when he makes default in payment of land revenue and notice as prescribed by the Rules has been served upon him or compensation has been paid to him. A Village Agricultural Committee cannot eject him.

*Yan Aung* for the applicant.

*Tin Hla* for the respondents.

The judgment of the Court was delivered by

MR. JUSTICE E MAUNG.—It is clear that the 1st respondent, Kywe Tai Village Agricultural Committee, acted in excess of its jurisdiction and powers, and that, accordingly, its proceedings, challenged herein, must be quashed.

\* Civil Misc. Application No. 45 of 1948 of the Supreme Court of the Union of Burma.

† *Present*: MR. JUSTICE E MAUNG and MR. JUSTICE KYAW MYINT of the Supreme Court and U Po Gyi, J.

S.C.  
1949  
—  
U KYAI  
v.  
KYWE TAI  
VILLAGE  
AGRICUL-  
TURAL  
COMMITTEE  
AND TWENTY  
OTHERS.

The Kywe Tai Village Agricultural Committee is a body appointed under the Disposal of Tenancies Act, 1948, and its powers and functions are confined to the disposal of leases of agricultural land under that Act and the rules made thereunder. It is not a revenue authority within the meaning of section 4, sub-section (1), of the Upper Burma Land and Revenue Regulation, 1889. Neither has the President, exercising his powers under section 4 (2) of the Regulation, appointed that Committee to exercise all or any of the powers of any class of Revenue Officer under the Regulation or any rule made thereunder. Moreover, there is no provision made under section 5, either by the President or by the Financial Commissioner, determining the functions to be discharged by this Committee. All that has happened, so far as is relevant to this case, is that on the 6th July 1948 a signal order was issued by some department of Government at Rangoon to the Collector, Pakòkku, under which he was instructed to entrust to the Village Agricultural Committees within his jurisdiction the function of distributing *myenu* lands in accordance with principles laid down in Direction 41 of the Land Revenue Manual. Clearly, such a signal order cannot take the place of an appointment under sections 4 and 5 of the Upper Burma Land and Revenue Regulation.

The facts which are not in dispute in this case are as follows. The applicant, since 1944, has been assessed to land revenue, and has been paying the revenue so assessed, in respect of Holding No. N/117 of 1947-48, in Bhodagon *kwin* in Pakòkku Township, measuring 4.52 acres. Further, the applicant has, from 1946, been assessed to revenue, and has been paying the revenue so assessed, in respect of another Holding, being N/108 of 1947-48 in the same *kwin*. These holdings form part of a strip of island land

measuring one hundred acres in Kywe Tai Village-tract. The 1st respondent Committee, purporting to act under instructions from the Collector, Pakōkku, allotted these two plots of land among the other respondents in this case. In doing so, the Committee did not take into consideration the claim made by the applicant that the two plots of land held by him under revenue assessment, in respect of one plot since 1944, and in respect of the other plot since 1947, have been assessed to land revenue in his name and that he has been paying the sums so assessed regularly; they proceeded entirely on the basis that these two plots are entirely at their disposal and that the applicant has not any substantive right whatsoever in respect of the same.

Section 23, clause (c), of the Upper Burma Land and Revenue Regulation declares that all islands and alluvial formations in rivers shall be "State Land" and section 25, clause (c), provides that "an occupier" of State Land may not, except for default in the payment of land revenue due from him to the Government, be ejected from such land without such "notice as may be prescribed by rules to be made by the President in this behalf or failing such notice, such compensation as, subject to any such rules, the Collector may, having regard to all the circumstances of the case, deem just."

Therefore, it is clear in this case that the 1st respondent Committee has usurped to itself a function which is not vested in it, and that, in performing that function, it has entirely ignored factors which, under the law in force, have to be taken into consideration in determining the rights of a person who has been assessed to land revenue in respect of any land at the disposal of the Government and of which he is in occupation. That being so, the proceedings

S.C.  
1949

U KYAI  
v.

KYWE TAI  
VILLAGE  
AGRICUL-  
TURAL  
COMMITTEE  
AND TWENTY  
OTHERS.

S.C.  
1949

U KYAI

v.

KYWE TAI  
VILLAGE  
AGRICUL-  
TURAL  
COMMITTEE  
AND TWENTY  
OTHERS.

of the 1st respondent Committee cannot be allowed to stand. These proceedings must be and they are hereby quashed. The respondents will pay the applicant's costs of these proceedings: advocate's fees five gold mohurs.