

1945

Present: Rose J.

## WICKREMESINGHE v. TAMBIAH.

In the Matter of an Application for a Writ of *Mandamus*.

*Mandamus—Respondent appointed Commissioner of Inquiry by the Governor—No reference to Commissions of Inquiry Ordinance—Exercise of powers by Commissioner under Ordinance—Right of petitioner to appear by Counsel—Commissions of Inquiry Ordinance (Cap. 276), ss. 2, 3, 4 and 7.*

The respondent was appointed by His Excellency the Governor, in pursuance of the powers contained in Article VII. of the Letters Patent constituting the office of Governor and Commander-in-Chief of the Island, to inquire into certain matters relating to the Kalatuwawa leases in which the petitioner was implicated or concerned. In the notice giving the terms of inquiry there was no specific mention of the Commissions of Inquiry Ordinance (Cap. 276).

*Held*, that the respondent could not avail himself of the powers contained in sections 2, 3 and 4 of the Ordinance which relate to the issue of summonses to persons to appear as witnesses or to produce documents, &c., without at the same time being bound by the obligations contained in section 7, viz., that any person who is in any way implicated or concerned in the matter under inquiry shall be entitled to be represented by an Advocate during the whole of the inquiry.

*Held, further*, as the specific matters complained of viz., the questioning of Mr. A—by the respondent and the private perusal by the respondent of a document handed to him at a formal sitting, disclosed no fact material to the inquiry, the petitioner was not entitled to the relief claimed.

**T**HIS was an application for a writ of *mandamus*.

*H. V. Perera, K.C.* (with him *N. Nadarajah, K.C.* and *E. B. Wikremanayake*), in support.

*N. E. Weerasooria, K.C.* (with him *C. S. Barr Kumarakulasingham* and *H. W. Jayawardene*), for respondent.

*Cur. adv. vult.*

February 15, 1945. Rose J.—

This is the return to a rule directed to the respondent to show cause why he should not disclose to the petitioner all the evidence both oral and documentary which he obtained in the petitioner's absence, and give the petitioner due and sufficient notice of any inquiry that he may hold in the future. The respondent was appointed by the Governor as sole Commissioner to inquire into certain matters relating to the Kalatuwawa leases. His appointment was made in pursuance of Article VII. of the Letters Patent constituting the office of Governor and Commander-in-Chief of the Island of Ceylon, and the requisite notice was published in the *Ceylon Government Gazette* dated September 25, 1944. For the purpose of the present proceedings, the material term of inquiry is as follows:—“Whether any person has been guilty of any

impropriety, negligence, omission or misconduct in regard to the receipt custody, scrutiny or disposal of tenders received in respect of the Kalatuwawa leases, or in regard to any other matter anyway relating to or arising out of the grant of those leases ”.

It is to be noted, as Counsel for the Respondent points out, that there is no specific mention in the above notice of the commissions of Inquiry Ordinance (Chapter 276). It is therefore contended that the respondent is not bound by the terms of section 7 of the Ordinance which provides *inter alia* that any person who is in any way implicated or concerned in the matter under inquiry shall be entitled to be represented by an Advocate during the whole of the inquiry. I may add that it is common ground that the petitioner is a person who is so implicated or concerned. It seems to me, however, that, without the powers provided by sections 2, 3 and 4 of the Ordinance which relate to the issuing of summonses to persons to appear as witnesses or to produce documents, the powers of the Commissioner in enforcing such summonses and the provision of penalties for any person giving false evidence, it would be impossible for the Commission to function efficiently. In fact in the present matter I am informed that the Commissioner, quite properly, has made use of the powers provided by these sections. I am of opinion, therefore, that the only reasonable interpretation of the Ordinance as a whole is that if a Commissioner is to avail himself of the powers contained in sections 2, 3 and 4 he must also be liable to the corresponding obligations contained in section 7.

The complaint of the petitioner, shortly stated, is that the respondent had declared on more than one occasion that it was his intention not only to hold formal sittings of the Commission which may of course be held either in public or in camera but concurrently to hold private sittings for the purpose either of interviewing witnesses or of examining documents; at which private sittings the petitioner and his Counsel would not be permitted to be present. Mr. Perera, Counsel for the petitioner, concedes that there can be no reasonable objection to the Commissioner interviewing witnesses or reading documents in private with a view to ascertaining whether the material so elicited is of sufficient materiality to be adduced at a formal sitting. What he does object to is the use of facts so elicited for the guidance of the Commissioner in compiling his report, without having such matters tested at a formal sitting.

Now it is true that from a perusal of the various statements made by the respondent from time to time at the formal sittings (copies of which are attached to the papers), the petitioner might not unreasonably have feared that it was the intention of the respondent to hold such concurrent inquiries, and it may be that at an earlier stage of this matter the respondent himself held the view that he was entitled to do so. At the present hearing, however, Counsel for the respondent has in the final resort taken up the position that his client proposes to make private investigations only for the purpose of eliciting material to be adduced, sifted, and tested at a subsequent formal sitting. So stated, his attitude seem to me to be unexceptionable and it is to be noted that on an earlier occasion—I refer to a passage appearing in exhibit A 2—the respondent

himself said, "The object of these public sessions is that relevant matters must be brought up in the way of evidence to enable the evidence to be tested by those who may consider themselves affected".

Even assuming that the petitioner is right in his opinion that the respondent at one time took too wide a view of his powers it seems to me that that of itself would not entitle the petitioner to succeed unless he can show that the respondent acted on such a view. Mere apprehension on the part of the petitioner that the respondent might in the future fall into error does not in my view entitle him to the relief claimed. The only matters specifically complained of were the private questioning of a Mr. Attygalle by the respondent and the private perusal by the respondent of a document handed to him at a formal sitting by a Mr. Fernando. It is now admitted that neither this questioning of Mr. Attygalle nor the document handed in by Mr. Fernando disclosed any fact material to the inquiry. That being so, and for the reasons that I have stated, I am of opinion that the petitioner fails and that the rule must be discharged. I would add that these proceedings may well have served a useful purpose in that they have demonstrated that, whatever may have been the position at an earlier stage, there now exists an identity of views between the petitioner and the respondent as to the proper procedure to be followed.

The petitioner must pay the costs of these proceedings.

*Rule discharged.*

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