

15/1/62

IN THE PRIVY COUNCIL

No. 62 of 1960

ON APPEAL FROM
THE SUPREME COURT OF THE ISLAND OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

29 MAR 1963

25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

NALLA KARUMBURU KAYAMBU SHANMUGAM
(Applicant) Appellant

- and -

68166

THE COMMISSIONER FOR THE REGISTRATION
OF INDIAN AND PAKISTANI RESIDENTS

Respondent

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CASE FOR THE APPELLANT

Record

1. The Applicant Appellant (hereinafter called "the Appellant"), appeals, with special leave, from the judgment and decree of the Supreme Court dated the 8th August 1958 whereby the Supreme Court dismissed, without reasons, the Appellant's appeal from the order of the Deputy Commissioner for the Registration of Indian and Pakistani Residents dated the 23rd May 1957 refusing the Appellant's application for the registration of himself, his wife and his children as citizens of Ceylon under the provisions of the Indian and Pakistan Residents (Citizenship) Act No. 3 of 1949 (hereinafter called "the Act").

p.54, 1.1 to
p.54, 1.10.

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p.48, 1.1 to
p.50, 1.30.

2. The Appellant's application for registration was made in due statutory form on the 13th July 1951. Under the provisions of the Act as it stood at the date of the application, the Appellant was required to prove, inter alia,

p.1, 1.15 to
p.8, 1.40.

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- (a) that he was permanently settled in Ceylon at the date of his application;
- (b) that he was resident in Ceylon, without absence exceeding 12 months on any single occasion, since the 1st January 1939; and
- (c) that his wife and children were resident

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in Ceylon since the date of the application.

3. On the 28th November 1952, Act No. 45 of 1952 amending the original Act came into force. The amending Act changed the requirements regarding the residence of the wife and children of married applicants. The relevant subsection of the Act, as amended, is as follows :-

6(2)(ii) "Where the applicant is a male married person (not being a married person referred to in paragraph (a) of section 3 (2)), that his wife was uninterruptedly resident in Ceylon from a date not later than the first anniversary of her marriage and until the date of the application. 10

x x x x x x x

For the purposes of the preceding paragraph (2)(ii), the continuity of residence of the wife or a minor child of an applicant shall not be deemed to have been interrupted by reason that she or he was not resident in Ceylon during the period commencing on December 1st 1941, and ending on December 31st 1945, or during any part of that period, if the Commissioner is satisfied that she or he did not reside in Ceylon during that period or part thereof owing to apprehension of enemy action in or against Ceylon or owing to special difficulties caused by the existence of a state of war." 20 30

p.23, 1.1 to p.24, 1.21

4. On the 25th June 1956, the Deputy Commissioner fixed the statutory inquiry into the Appellant's application for the 31st July 1956 and required the Appellant to prove:-

(1) that he was resident in Ceylon during the period 6th September 1944 to 14th November 1945, without absence exceeding 12 months on any single occasion;

(2) that his wife and dependent minor children were resident in Ceylon during the periods specified below without absence exceeding 12 months on any single occasion:- 40

his wife from 16th March 1945 to 12th

November 1946 and from 26th November 1946 to 1st April, 1948.

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(i) his child Karuppiah from 1st anniversary of date of birth to 18.1.1950.

(ii) his child Karunanithi from 1st anniversary of date of birth to 13.7.1951.

(3) that he had permanently settled in Ceylon;

- 10 5. At the inquiry the Appellant gave evidence and also called four witnesses to prove the requirements regarding residence. At the conclusion of the inquiry the Deputy Commissioner refused the application. In the formal order dated the 23rd May 1957, he set out the reasons for his decision. p.27, 1.18 to p.29, 1.10. p.44, 1.19 to p.46, 1.12. p.30, 1.28 to p.31, 1.45. p.46, 1.13 to p.47, 1.10.
6. The Deputy Commissioner held in the Appellant's favour the issues regarding the residence of the Appellant and of his children. The grounds for refusing the application were:- p.49, 11.30-35.
- 20 (a) that the wife's residence did not satisfy the requirements of the Amending Act No. 45 of 1952; and p.49, 11.23-29.
- (b) that the Appellant was not "permanently settled" in Ceylon. p.49, 11.35-36. p.50, 11.14-16.
7. With regard to the wife's evidence, the Deputy Commissioner assumed that the requirements of the Amending Act had to be satisfied. On the Appellant's evidence that his wife, though married in March 1944, had come to Ceylon only in October 1945, p.48, 11.24-26.
- 30 he held that the requirements of the Amending Act in regard to the wife's residence were not satisfied. He refused to apply to the case the special subsection 6(2)(ii) of the Act because:-
- (a) this subsection, in his view, applied only to wives or minor children "who had at some time been in Ceylon and who were for the reasons stated in the subsection taken to India for their greater safety"; p.48, 1.45 to p.49, 1.5.
- 40 (b) in any event, the evidence of the Appellant seeking to bring the case within the

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p.49, 11.13-23.

subsection was, in his view, belated; and

(c) because the Appellant had, in his application, stated that his wife was in Ceylon from 1944 to 1945.

p.49, 1.35 to
p.50, 1.17.

8. With regard to the issue of permanent settlement he regarded the statutory requirement of being permanently settled as being the same as acquiring a domicile of choice in Ceylon.

9. It is respectfully submitted that:-

(a) the amending Act, which came into force on 28th November 1952, does not apply to the Appellant's application, which had been made on 13th July 1951, because of the provision in subsection 6(3) of the Interpretation Ordinance (Chapter 2 Volume 1 of the Legislative Enactments 1938 Revision). Subsection 6(3) is as follows:-

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"Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -

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(a) the past operation of or anything duly done or suffered under the repealed written law;

(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;

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(c) any action, proceeding, or thing pending or incompleated when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."

(b) assuming that the Amending Act was applicable, the Deputy Commissioner was wrong in his construction of subsection 6(2)(ii) of the Act as amended;

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(c) the Deputy Commissioner's decision not to give the Appellant the benefit of the final provision of subsection 6(2)(ii) proceeds on a misdirection of fact relevant to belatedness and from his failure to consider the explanation given by the Appellant as to the filling in of the particulars in the application form;

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p.48, 11.19-23.

p.45, 11.22-25.

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(d) the decision on the issue of permanent settlement is based on a misconstruction of the statute, and the Appellant is entitled to have the issue answered in his favour, there being no facts inconsistent with the prima facie proof of permanent settlement afforded by the fact of his due application for registration.

10. The Appellant appealed to the Supreme Court which by the decision of single judge (K.D. de Silva J.) dismissed the appeal without reasons.

p.50, 1.22 to
p.53, 1.22.

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11. It is respectfully submitted that the order of the Deputy Commissioner dated the 23rd May 1957 and the judgment and decree of the Supreme Court dated the 8th August 1958 are wrong and should be set aside and that this appeal should be allowed with costs throughout for the following among other

R E A S O N S

1. BECAUSE the Amending Act No. 45 of 1952 does not apply to the Appellant's application.

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2. BECAUSE the Deputy Commissioner was, in any event, wrong in his construction of subsection 6(2)(ii) of the Act as amended.

3. BECAUSE the Deputy Commissioner was wrong in refusing to give the Appellant the benefit of the final provision of subsection 6(2)(ii) of the Act as amended.

4. BECAUSE the Deputy Commissioner's decision on the issue of permanent settlement was based on an erroneous construction of the Act.

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5. BECAUSE the Supreme Court was wrong in dismissing the Appellant's appeal.

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6. BECAUSE, on the facts proved, the Appellant is entitled to have himself, his wife and children registered as citizens of Ceylon under the Act.

E.F.N. GRATIAEN.

WALTER JAYAWARDENA.

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CASE FOR THE APPELLANT

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