

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

In the matter of an Appeal in terms of Article 138 read together with Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 7 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal case no. CA/PHC125/2011

H.C. Hambanthota case no. HCWA 02/2010

B.G.Nadeesha Wathsala,
“Sumuthu”, Senanayake Mawatha, Ambalanthota.

Complainant - Petitioner - Appellant

Vs.

1. B.G.Saddhasena,
Dikwela Niwasa, Siyambalagaswilla North,
Koggala Road, Ruhunu Rediyagama,
Ambalanthota.
2. B.G.Saman Rohitha,
Koggala Road, Ruhunu Rediyagama,
Ambalanthota.
3. B.G.Sunil,
No. 05, “Nilmini”. Mayurapura, Koggala.
4. Agrarian Development Assistant
Commissioner,
Agrarian Development District Office,
Hambanthota.

Respondent - Respondent - Respondents.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Ranil Samarasooriya with Manjula Ranasinghe for the
Complainant Petitioner Appellant.
: Vishwa de Livera for the 1st Respondent - Respondent -
Respondent.
: Nayomi Kahawita SC for the 4th Respondent - Respondent -
Respondent.

Argued on : 23.09.2016

Written submissions filed on : 04.11.2016

Decided on : 03.04.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Hambanthota.

The Complainant Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) complained to the 4th Respondent Respondent Respondent (hereinafter sometimes called and referred to as the 4th Respondent) that the 1st Respondent Respondent Respondent (hereinafter sometimes called and referred to as the 1st Respondent), being the tenant cultivator, has sub let the paddy land in question to the 2nd and 3rd Respondent Respondent Respondents without his sanction. After inquiry the 4th Respondent has dismissed his complaint. Being aggrieved, the Appellant filed an application in the High Court seeking for a writ of certiorari to quash the order of the 4th Respondent and a writ of mandamus compelling him to hold an inquiry. The learned High Court Judge dismissed the application. This appeal is from the order of the learned High Court Judge.

The contention of the Appellant is that the inquiry was not held by the Agrarian Development Assistant Commissioner as enacted in the Agrarian

Development Act No. 46 of 2000 (hereinafter sometimes called and referred to as the ADA) but was done by an inquiry officer. He argues that the post of inquiry officer was abolished by the ADA. Therefore any inquiry held by an inquiry officer is bad in law and therefore the order of the 4th Respondent based on the report of the inquiry officer is also bad in law.

The 4th Respondent in his Affidavit stated that the inquiry officer who did the inquiry is an Agrarian Development Officer and he did the inquiry under the authority of section 38(6) of the ADA.

Section 7(10) of the ADA provides a prohibition for sub letting without the consent of the owner and for an inquiry to be held by the Commissioner General on complaints on subletting. The section reads thus;

(10) Where a person (hereafter in this subsection referred to as the "lessor") lets any extent of paddy land to any other person (hereafter in this subsection referred to as the "lessee"); and the lessee does not become the tenant cultivator of such extent by reason of the fact that he is not the cultivator thereof, then if the lessee lets such extent to any person (hereafter in this subsection referred to as the "sub-tenant cultivator") and the sub-tenant cultivator become the tenant cultivator of such extent by reason of his being the cultivator thereof, the subtenant's right as the tenant cultivator of such extent shall not be affected in any manner by the termination of the lease granted by the lessor to the lessee :

Provided, that the lessee shall not let such extent of paddy land to a sub-tenant cultivator unless he;

(a) obtains the consent in writing of the owner of such extent of paddy land ; and

(b) thereafter notifies the Agrarian Development Council within whose area of authority such extent of paddy land wholly or mainly lies ;

Provided further that where any extent of paddy land is let by a lessee to a sub-tenant cultivator without obtaining the consent in writing of the owner of such extent of paddy land such sub-tenant cultivator shall not be entitled to any of the rights of a tenant cultivator in respect of such extent of paddy-land. The Commissioner-General, after inquiry, shall in writing order that the sub-tenant cultivator shall vacate such extent of paddy land on or before such date as shall be specified in that order and if such sub-tenant cultivator fails to comply with such order he shall be evicted from such extent in accordance with the provisions of section 8 and the landlord shall be entitled to cultivate such extent of paddy land.

Section 38 of the ADA provides for certain other officers to exercise the powers of the Commissioner General. Subsection 6 of that section empowers an Agrarian Development Officer to be authorized to exercise the powers of the Commissioner. The section reads thus;

(6) Every Agrarian Development Officer expressly authorized to do so by the Additional Commissioner, the Deputy Commissioner or the Assistant Commissioner within whose area, the area of authority of such Agrarian Development Officer falls, may exercise all or any of the powers of the Commissioner General under this Act, within the area to which such Agrarian Development Officer is appointed.

The Appellant's main argument in this appeal is that the inquiry officer who held the inquiry has no authority to hold an inquiry. The 4th Respondent with his objection to the writ application sworn an affidavit and stated that the officer who held the inquiry was an Agrarian Development Officer and he conducted the inquiry under the authority of section 38(6) of the ADA. The

Appellant raised the question that why the name of the inquiry officer was not revealed by the 4th Respondent. My view is that it is not material since the 4th Respondent swears to Court that the inquiry officer is an Agrarian Development Officer. There is no reason to disbelieve the 4th Respondent.

The Appellant did not object to the jurisdiction of the inquiry officer at the first opportunity. He has submitted himself to the jurisdiction of the inquiry officer knowingly that the inquiry is being held by an inquiry officer. The copies of the proceedings of the previous day can be obtained prior to the next day of inquiry. At least on the second day of the inquiry by the inquiry officer this objection would have been brought up. The Appellant without doing so, submitted to the jurisdiction of the inquiry officer. Now he is raising this objection on the footing that it is not mentioned below the signature of the inquiry officer that he is an Agrarian Development Officer. The 4th Respondent, the Agrarian Development Assistant Commissioner, swears to Court that the inquiry officer is an Agrarian Development Officer.

Under section 38(6) of the ADA, an Agrarian Development Officer can be authorized to hold the inquiry because he can be authorized to exercise the powers of the Commissioner General.

Under these circumstances I see no reason to interfere with the findings of the learned High Court Judge.

The appeal is dismissed.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal