

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

In the matter of an application for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ Application) No. 53/2018

- 1) Jayawarna Patabandige Gunapala,
'Dilini',
Jansagama, Maamadala.
- 2) Jayawarna Patabandige Tharanga
Sanjeevani,
- 3) Jayawarna Patabandige Indika
Suresh Kumara,

Both of No. 2/221, Jansagama,
Maamadala.

Petitioners

Vs.

1. Duminda Dissanayake, MP,
Hon. Minister of Agriculture,
Ministry of Agriculture,
No. 288, Sri Jayawardenapura
Mawatha, Rajagiriya.
2. M.A.S.Weerasinghe,
Commissioner General,
Department of Agrarian
Development,
No. 42, Sir Marcus Fernando
Mawatha, Colombo 7.

3. Chaminda Ekanayake,
Assistant Commissioner,
Department of Agrarian
Development,
District Office, Hambantota.
4. District Land Registrar,
District Land Registrar's Office,
Hambantota.
5. Officer-in-Charge,
Sri Lanka Police, Ambalantota.
6. J.L.P.Lalitha Ranjane,
D2 Canal, Nugawela,
Maamadala North, Maamadala.
7. Hondaarachchi Patabendige
Wijesiri Jayatilake,
No. 236/5, Pragathi Mawatha,
Katuwana Road, Homagama.

Respondents

**Before: P. Padman Surasena J/ President, Court of Appeal
Arjuna Obeyesekere J**

Counsel: Clifford Fernando with Jayantha Wickramasuriya for the
Petitioners

Ms. Chaya Sri Nammuni, State Counsel for the 2nd and 3rd
Respondents

Ms. Thushani Machado for the 6th Respondent

Supported on: 09th May 2018

Decided on: 08th June 2018

Arjuna Obeyesekere, J

When this matter was taken up for support on 9th May 2018, all Counsel agreed that the Order that would be made in this application would apply to Writ Application No. 54/2018, filed by the 1st Petitioner.

This application pertains to two complaints made by the 6th Respondent to the 3rd Respondent Assistant Commissioner of Agrarian Development, Hambantota. The first complaint is set out in the letter dated 1st August 2013, produced with the petition, marked 'P8a'. The second complaint is set out in the letter dated 15th August 2013, produced with the petition marked 'P9'. The 3rd Respondent has conducted two separate inquiries in respect of the two complaints 'P8a' and 'P9'.

After concluding the inquiry into the first complaint¹, the 3rd Respondent has conveyed his decision to all parties by letter dated 20th December 2017, marked 'P10a'. The outcome of the inquiry into the second complaint² has been conveyed to the 1st Petitioner by letter dated 20th December 2017 marked 'P10b'.

In order to give effect to the decision arrived at in 'P10a', the 3rd Respondent, acting in terms of Section 2(6) and Section 2(5) of the Agrarian Development Act No. 46 of 2000, as amended (the Act), has made two consequential orders, set out in the letters dated 8th January 2018 marked 'P11a' and 'P11b', respectively.

¹ Inquiry No. HA/04/Inquiry/2013/19

² Inquiry No. HA/04/Inquiry/2013/27

In this application, the principle reliefs sought by the Petitioners are Writs of Certiorari to quash the determinations of the 3rd Respondent contained in the aforementioned documents 'P10a', 'P10b', 'P11a' and 'P11b'.

As the principle reliefs prayed for are Writs of Certiorari, it would be opportune to bear in mind the following passage of Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service³, when considering this application:

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

“By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”

³ 1985 AC 374

"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'⁴. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

The facts of this case are briefly as follows. The 1st Petitioner claims that he is the tenant cultivator of an agricultural land in extent of 5 acres 3 roods 38 perches.⁵ The tenant cultivator details sheet prepared in 1992 from data available in the Agricultural Land Register has been produced with the petition marked 'P3b'. According to 'P3b', the 1st Petitioner is the tenant cultivator of two lots of lands, in extent of 3 acres and 2 acres and registered in the Agricultural Register under Serial Nos. 179 and 180, respectively.

⁴ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223

⁵ This land has been demarcated as Lot 3 in drawing bearing No. 22/2005, produced with the petition, marked 'P5'.

These two lands are identical to the lands referred to in the extracts of the Agricultural Register, produced with the petition, marked 'P4a' and 'P4b'. Thus, the total extent of land over which the 1st Petitioner is the tenant cultivator is 5 acres.⁶

The 6th Respondent is the tenant cultivator of a land in extent of 2 acres. The owner of this land is Hondaarachchi Patabendige Padmalatha Jayatilleke. The name of the 6th Respondent had been registered as the tenant cultivator in the Agricultural Register, as borne out by 'P3b', under Serial No. 182. An extract of the Agricultural Register pertaining to Serial No. 182 has been produced with the limited Statement of Objections of the 6th Respondent, marked '6R4'.

The 2nd and the 3rd Petitioners are the children of the 1st Petitioner. The ownership of the land set out in '6R4' in respect of which the 6th Respondent is the tenant cultivator had been transferred by Hondaarachchi Patabendige Padmalatha Jayatilleke to the 2nd and 3rd Petitioners by Deeds of Transfer Nos. 226 and 227 dated 1st March 2008, produced with the petition, marked 'P7a' and 'P7b'.⁷

In her first complaint marked 'P8a', the 6th Respondent has stated that she is the tenant cultivator of the agricultural land registered in the agricultural register under Serial No. 182, marked "6R4". She has stated further that the said land has been sold by its owner Hondaarachchi Patabendige Padmalatha Jayatilake to the 2nd and 3rd Petitioners, without informing her.

⁶ The maximum extent of paddy land that can be cultivated by a tenant cultivator in terms of Section 5(1) of the Act is 5 acres.

⁷ 'P7a' and 'P7b' have been attested by K. Ediriweera, Attorney-at-Law

Provisions relating to the sale of an agricultural land where there is a tenant cultivator have been set out in Section 2(1) of the Act, which reads as follows:

“The owner of an extent of paddy land in respect of which there is a tenant cultivator, who intends to sell such extent, shall in the first instance make an offer to sell such extent to the tenant cultivator. Such offer shall be made to the tenant Cultivator by communication in writing, and sent by registered post, stating the price at which he offers to sell such extent. The owner shall cause a copy of such communication to be sent by registered post to the Agrarian Development Council within whose area of authority such paddy land is situated.”

This complaint of the 6th Respondent was inquired into by the 3rd Respondent.⁸ The Petitioners and the 6th Respondent have been afforded an opportunity of presenting their respective cases before the 3rd Respondent and there is no complaint from the Petitioners with regard to the manner in which the said Inquiry was conducted.

The inquiry proceedings have been produced with the petition marked as 'P8'. The first issue that was required to be resolved by the 3rd Respondent was whether the 6th Respondent was the Tenant Cultivator of the land set out in '6R4'.

⁸ Inquiry No. HA/04/Inquiry/2013/19

The aforementioned extract of the agricultural register '6R4' had been produced by the 6th Respondent at the Inquiry. It establishes that the 6th Respondent is the Tenant Cultivator of the land set out therein, since 1992. The 6th Respondent had also stated that her late grandmother, Missynona Warnakulasuriya was the tenant cultivator of this land before her.⁹

The legal effect of the contents of the agriculture register has been set out in Section 53(6) of the Act, which reads as follows:

“An entry in the register of agricultural lands prepared in terms of Section 53(1) of the Act is admissible in evidence and shall be prima facie proof of the facts stated therein.”

A provision similar to Section 53(6) of the Act is found in the Agrarian Services Act¹⁰ and the Paddy Lands Act¹¹. The Supreme Court, in Wijendra v The Assistant Commissioner of Agrarian Services¹² which was a case under the Paddy Lands Act, has held as follows:

‘It must be remembered in this connection that under the Act, a register of paddy lands is maintained and under Section 35 it is a requirement that the names of the landlord, the tenant cultivator and such other particulars should be recorded therein. These registers are revised each year and the entries in the register are prima facie evidence of the particulars contained therein.’

⁹ Vide the letter dated 6th February 1987 produced at the inquiry

¹⁰ Section 45(3) of the Agrarian Services Act No. 58 of 1979. This Act has been repealed by the Agrarian Development Act No. 46 of 2000

¹¹ Section 35 of the Paddy Lands Act No. 1 of 1958

¹² 77NLR 372 at 374

In the light of the above facts, the 3rd Respondent has accepted the evidence given by the 6th Respondent that she was the tenant cultivator in respect of the land referred to in '6R4' since 1992. The learned Counsel for the Petitioners did not refer this Court to any material led at the inquiry by which the evidence contained in the agriculture register '6R4' had been rebutted. Thus, it would be safe to act on the findings of the 3rd Respondent that the 6th Respondent is the tenant cultivator of the land referred to in '6R4'.

The 6th Respondent had stated in her complaint 'P8a' that she was not aware of the sale of the land referred to in '6R4' by its owner to the 2nd and 3rd Petitioners. She had stated further that had she been offered the said land, she would have purchased the same. The evidence of the 6th Respondent that the paddy land in respect of which she was the tenant cultivator (vide '6R4') had been sold by its owner without informing her has been accepted by the 3rd Respondent. It is in these circumstances that the 3rd Respondent had determined in 'P10a' that the said sale is in violation of the provisions of Section 2(1) of the Act. The Petitioners have not drawn the attention of this Court to any material led at the inquiry that rebuts the basis of the finding of the 3rd Respondent.

The next issue that required to be addressed by the 3rd Respondent was the consequences of a violation of Section 2(1) of the Act. This is dealt with in Section 2(5) of the Act which provides that "any transfer by the owner of any extent of paddy land in contravention of the provisions of this section shall after inquiry be declared null and void and shall render the person in occupation of such extent under such transfer, liable to be evicted in accordance with the provisions of Section 8."

Acting under the powers conferred on him by Section 2(5) of the Act, the 3rd Respondent had proceeded under Section 2(5) of the Act and declared that the Deeds of Transfer 'P7a' and 'P7b' are null and void. The aforementioned decision of the 3rd Respondent has been conveyed to all three Petitioners by 'P10a'.

The evidence of the 6th Respondent that she is the tenant cultivator of the land in '6R4' and that its owner had sold the said land without informing her has not been rebutted by the Petitioners and remains uncontradicted. In these circumstances, this Court is of the view that the 3rd Respondent had arrived at the decision set out in 'P10a' based on the material led before him at the Inquiry. The said decision is within the powers conferred on the 3rd Respondent by the Act. Thus, the said decision embodied in 'P10a' is neither illegal nor irrational. Therefore this Court is of the view that 'P10a' is not liable to be quashed by a Writ of Certiorari.

In terms of Section 2(6) of the Act, "where a transfer of any extent of paddy land is declared null and void by the Commissioner General a copy of such declaration shall be transmitted under Section 5 to the Registrar of Lands of the District in which such extent of paddy land is situated."

The 3rd Respondent, by a letter dated 08th January 2018 marked 'P11a' has informed the District Land Registrar of the determination made by him at the Inquiry and that the Deeds of Transfer 'P7a' and 'P7b' have been declared as null and void. This is a consequential step that the 3rd

Respondent is required to take in terms of the law. In doing so, the 3rd Respondent has acted within the powers conferred on him under Section 2(6) of the Act. As no illegality has been committed by the 3rd Respondent in issuing 'P11a', this Court is of the view that 'P11a' is not liable to be quashed by a Writ of Certiorari.

Once an order has been made declaring a transfer of land as null and void, the Commissioner General is entitled in terms of Section 2(5) of the Act to take steps to evict the person in occupation of such land, in accordance with the provisions of Section 8 of the Act.

The first step in this regard is to issue a notice to the party sought to be evicted. Accordingly, by a notice dated 8th January 2018 marked 'P11b', the 3rd Respondent has directed the Petitioners to hand over possession of the land referred to in 'P10a', to the 6th Respondent, on or before 8th February 2018. The 3rd Respondent has further informed the Petitioners by 'P11b' that action would be taken in terms of Section 8 of the Act, if the Petitioners failed to comply with the said directive.

In sending out 'P11b', the 3rd Respondent has only exercised the power conferred on him by Section 2(5) of the Act. Therefore the action of the 3rd Respondent cannot be termed as *ultra vires* his powers conferred under the Act. In the said circumstances, this Court is of the view that 'P11b' is not liable to be quashed by a Writ of Certiorari.

It is significant to note that none of the said determinations 'P10a', 'P11a' and 'P11b' relate to the land set out in serial Nos. 179 and 180 of the Agriculture Register Act marked 'P4a' and 'P4b' but relate only to

the land set out in Serial No. 182 in the agricultural register marked '6R4'. Thus, the determinations set out in 'P10a', 'P11a' and 'P11b' does not affect the rights of the 1st Petitioner in relation to the lands set out in 'P4a' and 'P4b'.

The 6th Respondent by her second complaint marked 'P9' alleged that the 1st Petitioner is interfering with her cultivation rights in respect of the land registered in the agricultural register under Serial No. 182, marked '6R4'. It is noted that the said complaint does not relate to the lands of the 1st Petitioner set out in 'P4a' and 'P4b'.

Provisions relating to the interference of cultivation rights is found in Section 90(1) of the Act, which reads as follows:

"Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner General after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order on such person cultivator or occupier requiring him to comply with such directions as may be specified in such order necessary for the protection of such rights;

Provided that an order under this section shall not be made for the eviction of any person from such agricultural land..."

This complaint of the 6th Respondent was also inquired into by the 3rd Respondent.¹³ The inquiry proceedings have been produced with the petition, marked as 'P8'. Both the 1st Petitioner and the 6th Respondent have been afforded an opportunity of presenting their respective cases before the 3rd Respondent and there is no complaint to this Court with regard to the manner in which the said Inquiry was conducted.

The decision of the 3rd Respondent relating to the second complaint of the 6th Respondent had been conveyed to the 1st Petitioner by letter dated 20th December 2017 marked 'P10b'. On the material presented to him during the inquiry, the 3rd Respondent had concluded that the 1st Petitioner is interfering with the cultivation rights of the 6th Respondent. Accordingly, the 3rd Respondent has made an order under Section 90(1) of the Act that the 1st Petitioner should not interfere with the cultivation rights of the 6th Respondent and that the 6th Respondent should be permitted to possess the said land without any interference. The Petitioners have not referred this Court to any material that would contradict this position. It is noted that the 3rd Respondent has not made any order in this Inquiry for the eviction of any person, as alleged by the Petitioners.

It is the considered view of this Court that it is within the powers of the 3rd Respondent conferred under Section 90(1) of the Act to make the said order 'P10b'. This Court does not see any illegality in the said decision 'P10b' and therefore, this Court is of the view that 'P10b' is not liable to be quashed by a Writ of Certiorari.

¹³ Inquiry No. HA/04/Inquiry/2013/27

The Petitioners have complained to this Court that the eviction of the Petitioners from the agricultural land based on the second complaint marked 'P9' is illegal, as such an Order cannot be made in terms of Section 90. When one considers the four determinations that are sought to be quashed in this application, namely 'P10a', 'P10b', 'P11a' and 'P11b' and in particular 'P11b', it is clear that the eviction of the Petitioners from the land referred to in Serial No. 182 marked '6R4' has been done under the provisions of Section 2(5) of the Act and not under the provisions of Section 90(1) of the Act. Thus, this complaint of the Petitioners is misconceived, both in fact and in law.

The Petitioners have also complained to this Court that there has been a failure to identify the corpus from which the eviction is to take place. The Petitioners complain further that there has been no proper demarcation or identification of the agricultural land claimed by the 6th Respondent in any of the decisions sought to be quashed in this application, namely 'P10a', 'P10b', 'P11a' and 'P11b'.

When one considers the boundaries of the land registered in the agricultural register under Serial No. 182 marked '6R4' and compares them with the boundaries of the land referred to in 'P10a', 'P10b' and 'P11b', it is evident that the boundaries are identical. Thus, this Court is of the view that there has been a proper demarcation of the boundaries of the land claimed by the 6th Respondent.

In this regard, this Court would advert to the Limited Statement of Objections of the 6th Respondent and specifically to the document

annexed thereto marked '6R7'.¹⁴ According to '6R7', the two acres of land referred to in Serial No. 182, where the 6th Respondent is the tenant cultivator had been cultivated by the 1st Petitioner. The 1st Petitioner has admitted that he had cultivated a total extent of seven acres – i.e. the five acres of land set out in 'P4a' and 'P4b' and the two acres of land set out in '6R4'. The land in respect of which the 1st Petitioner is the tenant cultivator can be identified by reference to the boundaries set out in 'P4a' and 'P4b'. Similarly, the land in respect of which the 6th Respondent is the tenant cultivator can be identified by reference to the boundaries set out in '6R4'. Therefore, this Court is of the view that this complaint of the Petitioners is also misconceived.

It was brought to our notice that proceedings had been instituted by the 3rd Respondent in the Magistrate's Court of Hambantota¹⁵, under the provisions of Section 8(1) of the Act seeking to evict the Petitioners from the land referred to in '6R4'. According to the Order tendered to this Court by the learned Counsel for the 6th Respondent, the learned Magistrate has made an Order that possession of the said land be handed over to the 6th Respondent.

For the reasons set out in this Order, this Court is of the view that this is not a fit case in which notices should be issued as Writs of Certiorari will not lie to quash the determinations set out in 'P10a', 'P10b', 'P11a' and 'P11b'. Therefore, the necessity to consider the other relief prayed for

¹⁴ The document marked as '6R7' are the findings of the Assistant Commissioner of Agrarian Development at an inquiry conducted in 2010. The 6th Respondent and the 1st Petitioner had given evidence at this inquiry.

¹⁵ Case No. 41529

by the Petitioners does not arise. This application is dismissed, without costs.

As has been agreed upon by all the learned Counsel, this Order must apply to CA (Writ) Application No. 54/2018 also. Hence, the said CA (Writ) Application No. 54/2018 must also stand dismissed without costs.

Judge of the Court of Appeal

P. Padman Surasena J/ President, Court of Appeal

I agree.

President, Court of Appeal