IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application seeking writ of Certiorari.

Case No: CA (WRIT) 825/06

1. P.H. Bandula Hewage alias Hewage Bandula Sunil Amarapala. "Madushan", Temple Road, Ambagasdowa.
   And other.
   Petitioner.

Vs.

1. H.H.Dingiri Banda,
   Udumulla, Ambagasdowa.
2. Caminda Jayasekara,
   No.42, Meepilimana, Nuwara Eliya.
3. The Commissioner General of Agrarian Development,
   The Department Of Agrarian Development, Sir Marcuss Fernando Mawatha, Colombo 07.
4. Assitant Commissioner of Agrarian Development, Badulla.
5. Head Quarters Agrarian Development, Officer, Badulla.
6. Agrarian Development Officer, Yatipalatha, Ambagasgdowa.
7. The District Registrar of Lands. Badulla District, The District Land Registry, Badulla.

Respondents

BEFORE : K.T.Chithasiri J.

L.T.B.Dehideniya J.

COUNSEL : Avindu R.I Athurupane with Nayani Dayaratne for the Petitioner.

S.N. Vijithsinghe for the 1A-1H Respondents.

Janak de Silva, DSG with Surange Wimalasena, SSC for the 3rd – 7th Respondents.

ARGUED ON: 16.07.2015

DECIDED ON: 12.08.2015

L.T.B.Dehideniya J.

This is an application for a writ of Certiorari to quash the findings of the 5th Respondent that the 1st Respondent is the tenant cultivator of the paddy land subjected to this application; reported in the document marked P19, and all the subsequent decisions based upon the said report.

The original owner of the paddy land was V. M Jayasekara. He transferred his legal title to his son, the 2nd Respondent in 1987. The said V M Jayasekara died in 1995. The 2nd Respondent thereafter transferred the paddy land to the 2nd Petitioner in 1999. In 2003, the 2nd Petitioner transferred the said land to the 1st Petitioner by deed bearing No. 1574 (P7). The plaintiff's chain of title is not challenged by the 1st Respondent.

One and half years after P7 was executed, the 1st Respondent made a complaint to the 4th Respondent stating that the 1st Respondent is the tenant cultivator and the paddy land has been transferred without informing him. On the direction of the 4th Respondent the 5th Respondent held an inquiry and came to a finding that the 1st Respondent is the tenant cultivator. Based on this finding and acting under section 2(4) of the Agrarian Development Act No.46 of 2000, the 4th Respondent declared that the deed of transfer P7 is null and void.

The Petitioners do not accept that the 1st Respondent is the tenant cultivator. 1st Respondent's name was not registered as a tenant cultivator in the agrarian land registry. The 1st Respondent and his son had made several attempts to register their names as the tenant cultivators of the paddy land in issue was successfully resisted by the Petitioners and their predecessors in title. The documentary proof was tendered by the Petitioners and this fact was not challenged by the 1st Respondent.

The 1st Respondent in his objections stated that he was the tenant cultivator of the paddy land in question under the said V M Jayasekara. His position is that he was the tenant cultivator of the said paddy land and kept on giving the owner share to the landlord. He further says that he was cultivating the paddy land for a long period as a tenant cultivator until the 2nd Petitioner obstructed him. His argument is that his character as a tenant cultivator has been established and therefore this application has to be dismissed in limine. The 3 to 7 Respondents also filed objections stating that the 1st Respondent position as a tenant cultivator has been established.

All counsel made their oral submissions and tendered the written submissions too.

At the argument, counsel for the Petitioner raised two main issues. His first argument is that the inquiry conducted by the 5th Respondent was *ultra vires* because the 5th Respondent has no jurisdiction to determine whether a person claiming to be a tenant cultivator is in fact a tenant cultivator or not. His argument is that it is only a competent Court of Law that can determine the said issue. His argument is that the 4th Respondent can decide disputes between the landlord and the tenant cultivator under the Agrarian Development Act No 46 of 2000, only if the parties admit such relationship between them. He cites the case of Herath vs. Peter [1989] 2 Sri L R 325, which followed the unreported judgment of Dolawatte vs. Gamage and another (SC appeal No 45/83 SC minute of 27.09.85. which was attached as an annexure to the judgment).

The 1st Respondent's argument is that the 2nd Petitioner has admitted that the 1st Respondent is the tenant cultivator. He refers to page 93 of the inquiry proceeding. Therefore his argument is that the 5th Respondent has the jurisdiction to decide the issue.

3-7 Respondents argue that the scope of the new Agrarian Services Act is much wider than the earlier Agrarian Services Act No. 58 of 1979. The preamble of the new Act has expressed the intention of the Parliament. He argues that if the authorities cannot decide whether the

complainant is a tenant cultivator or not, the inquiry can only commence after establishing that he is a tenant cultivator in other forum. He argues that this is a splitting of jurisdiction.

In the case of Dolawatte vs. Gamage (which the judgment was attached as an annexure to Herath Vs. Peter (Supra)) at pages 329 and 330 it has been held that;

> *The judgment of the Court of Appeal, finding in favour of the 1st Defendant-Respondent, has been based mainly upon the judgment of the Supreme Court in the case of Hendrick Appuhamy vs. John Appuhamy (supra), where Sansoni, C.J. concluded, after a consideration of the provisions of the now-repealed Paddy Lands Act No. 1 of 1958, which was the earliest enactment in the sphere of agricultural lands legislation, and the precursor to the aforementioned Agrarian Services Act No. 58 of 1979 now in force, that, as the said Paddy Lands Act creates new rights and obligations and also provides the sole machinery to which a landlord must resort if he wants to have his tenant-cultivator evicted or his paddy field property,cultivated, no other remedy was available to the landlord since the said Act was passed, and that the said Act takes away the jurisdiction of the Courts by necessary implication. No submissions have been addressed to this Court against the correctness of the view so expressed in the said judgment. The view so expressed in that judgment in respect of the said Paddy Lands Act would hold good even in regard to the Act now in force, the Agrarian Services Act No. 58 of 1979 referred to earlier. Any dispute in respect of a paddy-field arising between a landlord and a tenant, as defined by the provisions of the said Act, and in relation to which express provision is made therein will be regulated by the provisions so contained in the said Act; and any such dispute would have to be determined in the manner set out in the said Act. Such dispute cannot be brought before and sought to be determined by a court of law.*

> *This principle will apply only if the dispute, which arises in respect of a paddy-field, is a dispute between a person, who is a landlord within the meaning of the said law, and a person, who is a tenant-cultivator within the meaning of the self-same Act. The two parlies to the dispute should each bear the character which the Act requires that each should in fact and in law bear and possess, in order to enable one to enforce the rights the Act gives him against the other, and to subject the other to perform the*

obligations which the Act compels him to perform. If one or the other does not in fact and in law possess the character each is so required to have and possess, then the provisions of this law cannot be availed of by one, and be imposed against the other.

At page 331 His Lordship Ranasinghe J. (as he was then) referring to the judgment of Sansoni C J. in the case of Hendrick Appuhamy vs. John Appuhamy (69 NLR 32) said that;

In that case the plaintiff clearly admitted that he was the landlord of the said paddy-field and that the defendant, whom he was bringing before the District Court, was his tenant-cultivator in respect of the said paddy-field. The plaint was clearly and categorically presented on the basis that he was the landlord and the defendant the tenant-cultivator, within the meaning of the said Paddy Lands Act, in respect of the paddy-land which was the subject-matter of the action and to which the provisions of the said Act applied. There was no dispute raised or challenge made in respect of the relationship between the plaintiff and the defendant. The relationship of the landlord and tenant-cultivator, which was the prerequisite to the application of the provisions of the Paddy Lands Act, was accepted and admitted as existing between the plaintiff and the defendant.

The Plaintiff-Appellant in this case has, however, come before the District Court alleging that the 1st Defendant-Respondent is a trespasser; and although he, the Plaintiff-Appellant, avers that he is the landlord of the paddy-field, which is the subject-matter of the action, he does not accept the 1st Defendant-Appellant as the tenant-cultivator of the said paddy-field. In fact he expressly denies that the 1st Defendant-Appellant is the tenant-cultivator. He avers that, although the 1 st Defendant-Appellant has had himself registered as a tenant-cultivator, such registration has been obtained fraudulently. There is thus no acceptance by the Plaintiff-Appellant of one of the essential basic facts and circumstances, the clear and undisputed existence and acceptance of all of which alone would bring into operation the statutory provisions of the relevant agricultural-lands law, the Agrarian Services Act No. 59 of 1979.

The Supreme Court has held that the Agrarian Services Legislature can come in to play only if the relationship between the landlord and tenant cultivator is accepted. This decision has been followed by this Court in Herath vs. Peter(supra). This interpretation was made when

the Agrarian Services Act No. 58 of 1979 was in operation. The new Act No 46 of 2000 has repealed the earlier Act. Counsel for the 3-7 Respondents argue that the preamble of the new Act is much wider than its predecessor and therefore the new Act provide for matters relating to landlords and tenant cultivators of paddy lands. When the Supreme Court has interpreted and explained the limits of the jurisdiction of the administrative authorities under the Act No 58 of 1979, can the Legislature extend that jurisdiction only by the preamble of an Act?

Maxwell on Interpretation of Statues 12th edition page 159 says that;

> *"It is also presumed that a statue does not create new jurisdictions or enlarge existing ones, and express language is required if an Act is to be interpreted as having this effect. That a statue (s.7 of the admiralty Court act 1861) which conferred on a Court jurisdiction over "any claims for damages done by any ship" was held not to confer on it jurisdiction over actions for personal injuries sustained in collisions at sea".*

The new Agrarian Development Act No 46 of 2000 does not contain express provision that the administrative authorities can decide whether the complainant is a tenant cultivator or not. In the contrary the Act expressly provide that the administrative authorities can decide whether a land is a paddy land or not. (Section 28 (1))

> *28.(1) The Commissioner-General may decide whether an extent of land is a paddy land.*
>
> *(2) The Commissioner-General may for the purpose of making a decision under subsection (1). call for and obtain the observations and information from the Agrarian Development Council within whose area of authority the extent of land is situate, and from the relevant government departments statutory boards and institutions. It shall be the duty of every such government department, statutory board and institution to furnish such observations and information as soon as practicable.*

Without express provision in the Act, the jurisdiction of the administrative authority, which has been already decided by the Supreme Court, cannot be enhanced. The preamble of the Act expresses the purpose for which it has been enacted but the Act should provide the mechanism or the procedure to achieve that. Even under the new Agrarian Development Act

No 46 of the 2000, the interpretation given in Herath Vs. Peter and Dolawatte Vs. Gamage on jurisdiction of the administrative authority is applicable.

The 2nd issue that is raised by the counsel for the Petitioner is that the finding in P19 is bad in law for the reason that it contained several errors of law on face of the record.

The 1st Respondent's name was never entered in the Agraricultural Land Register. The 1st Respondent and his son made several applications to revise the Agricultural Land Register to enter their names as tenant cultivators, but after inquiry, those applications have been turned down. From the beginning V M Jayasekara's name has been entered as the owner cultivator. Thereafter his son's name, then the Petitioner's name entered as owner cultivators, subsequently. Under Section 53(6) of the Agrarian Development Act, the Agrarian Land Register is a *prima facie* proof of the facts stated therein. The section reads thus;

> *53.(6) An entry in a register prepared or amended under the provisions of this section and which is for the time being in force shall be admissible in evidence and, shall be-prime facie proof of the facts stated therein.*

In the case of Hearh Vs. Peter,(supra) the unreported judgment of the case of Dolawatte vs. Gamage has been annexed as an annexure. In that case Ranasinghe, J. (as he was then) cited the judgment of Samarakoon CJ in Udugoda Jinawansa Tero vs. Yatawara Piyarathana Tero (S.C. appln.46/81, S.C. minute dated 5.4.82) and said,

> *Having quoted with approval the citations referred to above, Samarakoon C.J., in Undugoda Jinawansa Thero vs. Yatawara Piyaratne Thero. S.C. Appln. 46181, S.C.M. 5.4.82 stated, in regard to the evidentiary value of an item of evidence which is considered "prima facie evidence", thus:*
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> > *"It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal...If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value. Evidence in rebuttal may be either oral or documentary or both....The Register is not the only evidence"*

It was held in the case of *X (Employer) V. Deputy Commissioner Of Labour And Others [1991]1Sri L R 222 that;*

> *It is open to the petitioner to displace the effect of the prima facie evidence by offering further evidence of an inconsistent or contradictory nature*

In the said Act, the words used are "prima facie proof" and not the words "prima facie evidence". The contents of the agriculture land register are prima facie proved. When the Agricultural Land Register is considered as a starting point, the 1st Respondent has to rebut that prima facie proof and prove that he is the tenant cultivator.

The 1st Respondent has tendered documents marked P1 to P21 at the inquiry before the 15th Respondent. These documents were marked subject to proof. In an inquiry of this nature, the Evidence Ordinance does not apply. But the principles of the law of evidence must be followed.

Under section 36(4) of the Industrial Dispute Act, industrial court, labour tribunal, arbitrator or authorized officer or the Commissioner shall not be bound by any of the provisions of the Evidence Ordinance. In considering this section, His Lordship G. P. S. De Silva CJ. held in the case of Colombage V. Ceylon Petroleum Corporation [1999] 3 Sri L R 150 that;

> *Thus, on a scrutiny of the report R1, it is clear that the Labour Tribunal has reached the finding that the charge against Colombage has been established purely on inadmissible hearsay. No doubt a Labour Tribunal is not bound by the provisions of the Evidence Ordinance (s. 36 (4) of the Industrial Disputes Act). Tennekoon, J. (as he then was) in Ceylon Transport Board v. Ceylon Transport Workers' Union(1) at 163, referred to section 36 (4) and stated: "This is only intended to permit a Labour Tribunal in its discretion - which of course must be exercised reasonably - to admit as evidence all matters which he considers material even though a court of law would not regard it as judicial evidence". In my view this section does not permit a Labour Tribunal to act in total disregard of one of the fundamental principles underlying the provisions of the Evidence Ordinance. A Labour Tribunal is clearly under a duty to judicially evaluate the evidentiary material placed before it. This the Labour Tribunal has failed to do, for it has acted solely on inadmissible hearsay contained in R1. Inadmissible hearsay is excluded on the plainest considerations of fairness and*

justice, for it is material upon which no reliance could be placed. The evidentiary value of R1 is nil.

The inquiring officer has heavily relied on several documents. One of that is the document marked P6 at the inquiry. This is a letter issued by the Grama Niladhari in relation to crop distribution. The Grama Niladhari was not called as a witness to testify to the truthfulness of the document P6. Under these circumstances, when the 1st Respondent tenders this letter to the inquiring officer, it becomes hearsay evidence. P10 is also a letter issued in relation to the crop distribution by the Agriculture Research and Production Assistant. This gentleman was also not called as witness. The letter P16 is also a certificate issued by a Govi Sanvidanaya. President or the Secretary of this association (both of them have signed the letter) was not called to give evidence. Therefore, all these three letters, where the inquiring officer has relied heavily, are hearsay evidence. The evidentiary value of P6, P10 and P16 is nil.

The 1st Respondent made the application to enter his name as the tenant cultivator in 1999. For the first time he paid the acreages taxes in 1998. The document was marked as P19 at the inquiry. By that document he has paid taxes from 1989 to 1998. This shows that he was not paying any acreage taxes till 1988, but in 1998 he started preparations to claim that he is the tenant cultivator.

The 5th Respondent has relied on unacceptable evidence to come to conclusion that the 1st Respondent is a tenant cultivator. Therefore the finding of the 5th Respondent reported in P19 that the 1st Respondent is the tenant cultivator, is bad in law.

The 1st Respondent's argument that the 2nd Petitioner has admitted that the 1st Respondent is a tenant cultivator cannot be accepted. There is one sentence in evidence of the 2nd Petitioner that the 1st Respondent was working as a tenant cultivator. It was not the stand taken by the 2nd Petitioner at the inquiry. He categorically denies that the 1st Respondent was the tenant cultivator. Therefore, when the evidence is considered as the whole it cannot be considered that the 2nd Petitioner has admitted that the 1st Respondent was the tenant cultivator.

Under these circumstances, the determination of the 5th Respondent which contains in P19 is bad in law and has to be quashed. Once that determination is quashed all the other decisions taken on the basis of that determination cannot stand.

I issue a mandate in the nature of writ of certiorari quashing;

i. Finding and the reports of the 5th Respondent dated 3012.2005 (marked P19)

ii. The decisions/declaration of the 4th Respondent dated 15.03.2006 (marked P20)

iii. The transmission by the 4th Respondent the said decision/declaration to the 7th Respondent marked P21

iv. The registration by 7th Respondent of the said decision/declaration dated 15.03.2006 in the relevant register of land.

v. All further steps by one or more of the 3-7 Respondents based on the said decisions/declaration of the 4th Respondent dated 15.03.2006

Application allowed.

JUDGE OF THE COURT OF APPEAL.

K.T. Chitrasiri, J.

I agree.

JUDGE OF THE COURT OF APPEAL.