

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

In the matter of an application for a Writ
of *Certiorari*.

U.H. Piyathilake,
No: 348, Beminiyanwala, Mamadala,
Ambalantota.

Petitioner

CA (Writ) Application No: 398/17

Vs.

Inquiry No: AT/09/05/10(1)/2015/12/N/195

1. Leelawathie Jayaweera,
No. 110, Beliatta Road, Tangalle.
2. J. Dickmadugoda,
Agrarian Inquiry Officer,
Hambantota Agrarian Tribunal,
Agrarian Service Centre,
Netolpitiya.
3. Chaminda Ekanayake,
Assistant Commissioner of Agrarian
Development Hambantota.
4. D.V. Bandulasena,
Commissioner General of Agrarian
Development,
No. 42, Sir Marcus Fernando Mawatha,
P.O. Box 537, Colombo 07.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : W. Dayarathne, PC with R. Jayawardena for the Petitioner.

Rohan Sahabandu, PC for the 1st Respondent.

Supported on : 09/01/2018

Decided on : 16/02/2018

Order

A.L. Shiran Gooneratne J.

By application dated 28/11/2017, the Petitioner inter alia, is seeking an order in the nature of Writ of Certiorari to quash the decision of the Assistant Commissioner of Agrarian Development, Hambantota (3rd Respondent) dated 25/10/2017, marked P11, the decision of the Agrarian Inquiry Officer, Hambantota Agrarian Tribunal (2nd Respondent) dated 17/06/2016, marked “P8B”, and to stay an action been filed in the Magistrate’s Court to evict, the Petitioner in terms of Section 8 of the Agrarian Development Act No. 46 of 2000 (as amended).

It is common ground that the decision dated 30/06/2015, in terms of the Agrarian Development Act No. 46 of 2000 (herein after sometimes referred to as the “said Act”), the Petitioner’s mother Y.G. Adanona Gunawardena was declared as the Tenant Cultivator to the paddy land called “Mullekumbura” in extent of A:3 R:0 PO, situated at Beminiyanwala in Lunama Agrarian Services Area. The said

order of the Agrarian Tribunal is marked P5. The Petitioner and the 1st Respondent gave evidence at the said inquiry.

After the death of Petitioner's mother, the 1st Respondent filed an application in terms of Section 10 (1) of the said Act, claiming arrears of rent to the said paddy land from the Petitioner. According to the settlement reached by the parties at the inquiry to this application, the 1st Respondent was accepted as the Landlord and the Petitioner as the Cultivator and the said Petitioner agreed to pay all arrears of rental in respect of the said paddy land to the 1st Respondent. However the Petitioner has defaulted the payment of installments due on rental as agreed in the settlement. The Petitioner's stand on this issue was that, the 1st Respondent was deliberately avoiding to accept the due rentals. However, the 1st Respondent categorically denies the said assertion.

Due to the said default in payment of rentals, the Assistant Commissioner of Agrarian Development Hambantota (3rd Respondent) by letter dated 17/06/2016, marked "P8B", has informed the Petitioner that in terms of Section 10 (2) of the said Act, the tenancy rights of the Petitioner has ceased and therefore, the Petitioner should vacate the said paddy land and hand over possession of the said land to the 1st Respondent, failing in which legal action was to follow in terms of Section 8 of the said Act to evict the Petitioner.

The Petitioner submits that at no time was the 1st Respondent declared as the Landlord nor the Petitioner declared the Tenant Cultivator of the said paddy

land and therefore the inquiry held under Section 10 (1) of the said Act is void ab initio. The Petitioner has cited the Judgement of *Madduma Bandarage Dona Sirilina Karunaratne Meegoda, and D. Jayasinghe*, reported at 79 (1) NLR 233, in support.

The 1st Respondent in the limited objections filed of record, state that, according to P10, the Petitioner has admitted that the 1st Respondent is the Landlord of the said paddy land and the Petitioner as the Tenant Cultivator at the inquiry held by the Assistant Commissioner of Agrarian Services. At the said hearing the 1st Respondent as the Landlord and the Petitioner as the Tenant Cultivator were heard in person.

In paragraph 01 of P10, the Petitioner states,

“ඉහත අංකය යටතේ ලුණම ගොවිජන සේවා බලප්‍රදේශයේ බැමිණියන්විල ග්‍රාම නිලධාරී වසමේ මුල්ලෙ කුඹුර නැමැති කුඹුරු ඉඩමේ ඉඩම් හිමියා වන ලීලාවතී ජයවීර අය විසින් හම්බන්තොට ගොවිජන විනිශ්චය සභාවේ නොටොල්පිටිය කාර්යාලය වෙත කරන ලද පැමිණිල්ල අදාළව 2016/06/17 වන දිනැති තීරණය හා බැඳේ.”

In the same document at paragraph 2, the Petitioner also states,

“එම තීරණය අනුව රු.95250 ක් හම්බන්තොට ගොවිජන සේවා සහකාර කොමසාරිස් කාර්යාලයේ නීති නිලධාරී ඊ.පී. සුගතපාල යන අය ඉදිරිපිටදී ලීලාවතී ජයවීර ට ගෙවන ලද අතර ඉතිරි මුදල වන රු.95250 මුදලක් 2017/06/30 වන දිනට ගෙවිය යුතුව ඇත. එම

මුදල ගෙවීමට ලීලාවතී ජයවීර නැමැති ඉඩම් හිමියාට ගෙවීමට මේ දක්වා උත්සාහ ගත්ත ද ඇය මෙම මුදල භාර ගැනීමට පැමිණෙන්නේ නැත. මා දුරකතනය මගින් කොතෙක් දැනුම් දුන්න ද එම මුදල් භාර නොගෙන අට වන නියෝගය ක්‍රියාත්මක කර මා හට විශාල අගතියක් සිදු කිරීමට මැය උත්සාහ ගන්නා බව පෙනේ.”

In the circumstances it is very clear that the Petitioner has admitted the rental due to the 1st Respondent in respect of the said paddy land.

The 1st Respondent has also drawn attention of Court to two Mortgage Bonds marked 1R1 and 1R2. By the said Mortgage Bonds, the Petitioner has raised loans by mortgaging the said paddy land to a third party. The fact that the said land was mortgaged by the Petitioner to a 3rd party, was not disclosed at the inquiry held by the Agrarian Officer, the Petitioner has also failed to disclose the said agreements to Court. It is observed that the Petitioner has failed to make material disclosure of all the relevant facts and thereby has failed to show the required care in a judicial review claim.

In all the above circumstances notice to the Respondents are refused and the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL