

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

Wijayamunige Lancyhamy,
'Sujith', Wijayasiripura,
Walasmulla.
Petitioner-Appellant

CASE NO: CA/PHC/104/2012

HC CASE NO: SP/HCCA/TA/WRIT/1/2009

Vs.

1. Assistant Commissioner of Agrarian
Development,
Hambantota.
2. H.K.D. Karunawathie,
Baduruppa,
Wijayasiripura,
Walasmulla.
Respondent-Respondent

Before: A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam for the Petitioner-Appellant.
Avanthi Weerakoon, S.C., for the 1st
Respondent.

Anura Gunaratne with Gamini Kirindage for the
2nd Respondent.

Argued on: 20.06.2019

Decided on: 02.07.2019

Mahinda Samayawardhena, J.

The petitioner-appellant filed this application in the High Court seeking to quash the decision of the 1st respondent Commissioner General of Agrarian Development marked P4 by writ of certiorari. The learned High Court Judge dismissed this application. This appeal by the petitioner is against the said Judgment.

It is undisputed that the mother of the 2nd respondent was the tenant cultivator of the paddy land in suit under the petitioner as the landlord. Upon the death of the mother, when the 2nd respondent started to continue with the cultivation, the petitioner has objected to it on the basis that, the 2nd respondent cannot succeed to the tenancy rights of her deceased mother.

It appears from 1R1 that the 2nd respondent has complaint it to the Agrarian Development Officer of the area. As seen from 1R2, the latter has held an inquiry into that matter. The learned State Counsel for the 1st respondent has tendered the same written submission which was tendered to the High Court wherein it is stated that "*At the end of the said inquiry the Agrarian Development Officer had informed the parties to seek the advice of the 1st respondent since the matter involved a succession of the tenancy rights [and] thereafter the petitioner had dispatched the letter marked as P3 addressed to the 1st respondent*". Then it is abundantly clear the background to the letter marked P3.

By P3, under the heading of "*To Know Succession of Tenant Cultivator under the Agrarian Development Act, No. 64 of 2000*", the petitioner requested the 1st respondent to inform her, upon the death of a tenant cultivator, whether, a family member can succeed to the tenancy rights despite her objections, and, if so, according to the Agrarian Development Act, No. 64 of 2000, who shall be the next tenant cultivator. As seen from P3, the petitioner has sent a self-addressed stamped envelope to send the reply.

There cannot be any dispute that P4 is the reply to P3. P4 is under the same heading and refers to P3 in the first sentence. Surprisingly, the 1st respondent does not in P4 answer the clear question which the petitioner raised in P3, but informs the petitioner not to disturb the cultivation rights of the 2nd respondent.

Both the learned State Counsel for the 1st respondent and the learned counsel for the 2nd respondent admit that by P4 the 1st respondent did not address the issue raised by the petitioner, i.e. succession under the Agrarian Development Act.

The learned State Counsel at the argument further stated that what the 1st respondent has done is to make a provisional order in order to prevent the breach of the peace. That argument is equal to the answer of the 1st respondent by P4 to P3.

The learned counsel for the 2nd petitioner in order to justify P4, drew the attention of the Court to section 90 of the Agrarian Development Act to say that the 1st respondent was entitled to make that order.

I accept that the 1st respondent is empowered under section 90 of the Act to make decisions on cultivation rights of agricultural

lands. But I am unable to accept that this was the occasion to decide that question.

With the risk of being repetitive, if I may stress, P4 claims to be the reply to P3, but admittedly it is not so. P3 question is on one point and P4 purported answer is on another point. The fact that the decision contained in P4 is one which the 1st respondent is entitled to make is, in my view, beside the point. I quash P4 on that basis by way of certiorari.

The 1st respondent will now reply to P3 if necessary after holding an inquiry.

This Judgment of mine shall not be construed to mean that the 1st petitioner cannot decide on agricultural rights in terms of section 90 of the Agrarian Development Act.

The High Court has not considered the application on the correct perspective but dismissed the application on a wrong premise on suppression of material facts.

I set aside the Judgment of the High Court and allow the appeal with costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal