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

In the matter of the application for a writ in the nature of a writ of certiorari and mandamus under article 140 of the Constitution of the Republic of Sri Lanka

Agampodi Rohini Mendis

No.08 B, Temple Road,

Wanduruppa,

Ambalantota.

Complainant

Vs.

Court of Appeal Case No:
CA/WRIT/168/2018

1. G. H. Premadasa
   72, D 13, Elayaya 02,
   Colombagera,
   Embilipitiya

2. Keedaman Mendis
   Jayasinghe alias Eaman
   Wanduruooa,
   Ambalantota

RESPONDENTS

And Now Between

Keedaman Mendis
Jayasinghe alias Eaman
Wanduruppa,
Ambalantota

2nd Respondent/Petitioner

Vs

1. Agampodi Rohini Mendis
   No 08. B, Temple Road,
   Wanduruppa,
   Ambalantota.
   Complainant/ Respondent

2. G. H. Premadasa
   72, D 13, Elayaya 02,
   Colombagedara,
   Embilipitiya

   1st Respondent / Respondent

3. Chaminda Ekanayaka
   Assistant Commissioner of Agrarian Development
   Agrarian Development Office,
   Hambantota.

4. D. V. Bandulasena
   Commissioner General of Agrarian Development
   No. 42, Sir Marcus Fernando Mawatha,
   P O Box 537, Colombo 07

   Respondents

Before:	C.P Kirtisinghe, J Mayadunne Corea, J
Counsel:	W. Dayarathne P.C. with R Jayawardena for the 2nd Respondent / Petitioner SC Sabrina Ahamed for 3rd & 4th Respondent/Respondent Saanranath Palliyaguruge for Complainant Respondent
Argued on:	02/08/2022
Written Submissions:	Tendered by 2nd Respondent/Petitioner on 01/03/2021 and 09/08/2022 3rd & 4th Respondents 24/07/2022 and 03/08/2022
Decided on:	29/09/2022

Mayadunne Corea J

The facts of the case briefly are as follows, the 2nd Respondent Petitioner who will be called the Petitioner hereinafter, alleges that he is the subtenant cultivator of the paddy field called "Liyanamahattayagama Kumbura". He further alleges that the said paddy field belonged to two brothers who had later transferred it to the Complainant-Respondent. The 1st Respondent had been the tenant cultivator of the said paddy filed since 1986. As the 1st Respondent had seriously fallen ill, it is alleged that he had gone with the Petitioner to one Somapala, whom he believed was the owner, and had sought his consent for the Petitioner to cultivate the paddy field. It is the position of the Petitioner that the said Somapala had given consent on the basis that the Petitioner pays him the rent. However, the ownership of the paddy field had changed and the new owner, the Complainant Respondent subsequently complained in terms of section 7(10) of the Agrarian Development Act No 46 of 2000, alleging that the 1st Respondent had without consent sublet the paddy field to the Petitioner, thereby in violations of the provisions of the Agrarian Development Act and had requested to cancel the tenancy rights of the 1st Respondent-Respondent and to obtain the vacant position. Thereafter the Assistant Commissioner fixed the matter for inquiry. The Petitioner as well as the Complainant Respondent's agent had taken part in the inquiry. After the conclusion of the inquiry, both parties had been given the opportunity to file their written submissions and subsequently, the 3rd Respondent delivered his order. Being aggrieved by the said order, the Petitioner has filed this application seeking a writ of certiorari and a writ of Mandamus.

The complaint of the Petitioner

The Petitioner complains that he was the tenant cultivator of the paddy field in question and the 3rd Respondent's order is contrary to law and that he has failed to consider the material submitted

by him and has only considered the material of the complainant Respondent and thereby has violated the rule of *Audi Altrem Partem.*

At the argument stage, the Petitioner complained that the 3rd Respondent's order violates section 7(10) of the Act.

The Petitioner has prayed for the following relief.

(b) issue a mandate in the nature of a writ of certiorari to quash the decision of the 3rd Respondent on 08/03/2018

(c) issue a mandate in the nature of a writ of mandamus against the 3rd and 4th Respondents to accept the 2nd Respondent/ Petitioner as the Tenant Cultivator.

All parties made extensive submissions to this Court and have filed their respective written submissions.

The Complainant-Respondent, as well as the 3rd and 4th Respondents, took several objections pertaining to the Petitioner's application and at the argument stage, all the Respondents argued *interalia* that there is misrepresentation and willful suppression of material facts and therefore the Petitioner's application has to fail.

Both the Claimant-Respondent and the Petitioner are not at variance on the fact that the original owners of half a share of the paddy field were Somapala Mendis and Sugathadas Mendis. The said Somapala Mendis is the father of the Complainant-Respondent. In the year 1996, Somapala Mendis had given his undivided ½ share to the daughter, the Complainant-Respondent. Thereafter the said Sugathadasa Mendis too had transferred his undivided ½ share to the Complainant-Respondent in the year 2005. Thus, the Claimant-Respondent had become the owner of the paddy field in question. Her name has been registered in the paddy land register.[1] However, it is the contention of the Petitioner that despite the ownership being transferred, the said Somapala and Sugathadasa had remained the landlords of the paddy field. At the argument stage, the Learned Presidents Counsel appearing for the Petitioner, submitted that they are not contesting the ownership of the Claimant-Respondents. It is pertinent to note that the Petitioner himself has averred in his petition that the said Somapala had gifted his ½ share to the Complainant-Respondent in 1996 by way of a deed of gift, leaving the life interest to them. However, the said life interest too had been transferred to the daughter on 21.12.2004. It is not disputed that the co-owner Sugathadasa Mendis too had gifted his undivided ½ share to the Complainant-Respondent on 15.09.2005 making the Complainant-Respondent the absolute owner of the paddy field. It is also common ground that the 1st Respondent-Respondent is the registered tenant cultivator. The parties are not in dispute that the applicable law is the Agrarian Development Act No 46 of 2000. The parties are also not in dispute that the Petitioner is cultivating the land but is not registered as the tenant cultivator in the agrarian lands register. While the Petitioner claims that he is cultivating in the capacity of the tenant cultivator, the Claimant-Respondent contends that he is a sublessee of the 1st Respondent and the 1st

[1] Paddy land register marked P1

Respondent had sublet his rights of tenant cultivator without the consent or the approval of the Claimant-owner and thereby contravened the provisions of the Agrarian Development Act[2].

The question before the inquiring officer was whether the 1st Respondent sublet his tenancy rights in contravention of the provisions of the Agrarian Development Act.

The Petitioner contends that the 1st Respondent-Respondent the tenant cultivator had fallen ill in the year 1998 and that on the request of the tenant cultivator, he had taken over and commenced cultivating. It is his position that he had gone with the 1st Respondent-Respondent to meet the owner Sompala Mendis and with his consent had commenced cultivating. This position was vehemently denied by the Claimant-Respondent. In the face of this denial, the Petitioner failed to substantiate his contention with any documentary evidence and failed to explain why he was unable to call the said Somapala Mendis as a witness. It is pertinent to note that as per the statute, for the Petitioner to succeed as the subtenant cultivator, he should have established that he was in possession of the written consent of the owner of the paddy field, which the Petitioner has failed to demonstrate. The Petitioner's contention of him being the tenant cultivator still becomes weak in view of document 1X2 which will be dealt with elsewhere in this judgment. Thus, whether the Petitioner is cultivating this paddy field with the consent of the owner, becomes a disputed fact.

As submitted, the Complainant-Respondents complaint to the Commissioner was two folds, namely, the Petitioner is not the tenant cultivator but a sublessee of the tenant cultivator, who had sublet the tenancy without the consent of the owner, thereby violating the provisions of the Act and for eviction.

In response, it was the contention of the Petitioner that even at the time of the inquiry, the Petitioner was cultivating the paddy field and thereby he becomes the tenant cultivator and that he had at all times given the rent to the owner, firstly to Somapala and thereafter to the Complainant-Respondent. This contention too was denied by the Complainant-Respondent

This Court observes that the Petitioner has failed to submit before the Commissioner or to this Court any receipts pertaining to the payment of the rent by him. The Petitioner had submitted before the Commissioner that the inability to tender the receipts for rent was due to his house being affected by the tsunami in the year 2004. However, as submitted by the Complainant-Respondent, this Court observes that the Petitioner has failed to adduce any independent evidence or material to substantiate this contention. Nevertheless, it is pertinent to note that the Petitioner had failed to submit any receipts for payment of rent by him even after the year 2004 till the commencement of the inquiry before the Commissioner.

It is also pertinent to note that as reflected in the documents marked 1R1 to 1R5 before the Commissioner, the Respondents had issued rental receipts for the period 2005/2006 and 2007/2008. The said receipts had been issued in the name of the registered tenant cultivator Premadasa. This refutes the contention of the Petitioner that he had been the tenant cultivator since 1998 and that it was he who had paid the rent. The learned Presidents Counsel for the Petitioner submitted that even though the receipts had been issued in the name of the 1st Respondent Premadasa, the rent was paid by the Petitioner. It was further submitted by the

[2] Section 7(10) of Act no 46 of 2000

learned Counsel for the Petitioner, that 1st Respondent-Respondent Premadasa, in his evidence before the Commissioner, had denied the said receipts being issued to him. However, the Petitioner was unable to explain to this Court why he had not objected to the receipts being issued in the name of the 1st Respondent- Respondent when the Petitioner was paying the rent and also as alleged by the Petitioner if the Petitioner was the tenant cultivator. This absence of explanation in our view supports the contention of the complainant Respondent, that as far as they were concerned, the tenant cultivator was the 1st Respondent Premadasa and negates the Petitioner's argument that he was the tenant cultivator and was cultivating with the consent of the owner.

The Petitioner's main contention before this Court was that the order given by the Commissioner (marked Y by the Petitioner and 3R2 by the Respondents) is in violation of section 7(10) of the Act and thereby should be quashed by way of a writ of certiorari. At this stage, it will be pertinent to consider the provisions of the relevant law namely section 7(10) of the Agrarian Development Act No 46 of 2000. The said section reads as follows;

"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 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 extent by reason of his being the cultivator thereof, the sub tenant'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 subtenant 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."

The attention of this Court was drawn to the paddy land register that had been marked in the proceedings before the Commissioner. As per the said registry extracts which had been issued in the years 2008 and 2013, the tenant cultivator's name is reflected as of the 1st Respondent-Respondent Premadasa. As per section 53(6) of Act no 46 of 2000 the said register is *prima facia* proof of the facts stated therein. Nevertheless, we do agree with the learned presidents'

Counsels' submission that the *prima facia* proof offered by the extracts of the paddy land registry can be rebutted. However, this should be done with credible and cogent evidence. The burden is on the Petitioner to submit independent oral and documentary evidence in rebuttal. In our view, the Petitioner has failed to rebut this presumption and has failed to adduce any reason for his failure to effect an amendment and insert his name on the register, especially as alleged, if he had been the tenant cultivator from 1998 till the complaint was made. As per document 3R2 the complaint had been made in the year 2011. Even at the argument stage, the Petitioner failed to give an explanation as to why he failed to take any steps pertaining to amending and inserting his name in the register. Thus, in our view, the Petitioner has failed to avail himself of the best evidence to establish his tenancy. Accordingly, this Court respectfully disagrees with the Petitioner's argument that there is sufficient evidence adduced by him to rebut the presumption. With his failure to sufficiently rebut with cogent evidence, the presumption defeats his contention that he was the legally accepted tenant.

It is also pertinent to note that if a tenant wants to relinquish his tenancy rights it is provided for in the Act itself[3]. The Petitioner has failed to establish before the Commissioner or this Court that the 2nd Respondent had ceded his rights for tenancy under the Act. He has failed to produce any document or independent evidence to establish his contention that subsequent to the 2nd Respondent ceding his rights as the tenant cultivator, he had the consent and the recognition of the owner to be the tenant cultivator as per the provisions of the Act.

This Court has considered the Petitioner's contention that he had assumed the tenancy rights and should be considered the tenant cultivator when the 1st Respondent ceded his tenancy rights as opposed to the Claimant Respondent's argument that the Petitioner is only a sublessee of the 1st Respondent and was cultivating in the said capacity of a sublessee. In this regard, it is also pertinent to consider the evidence of 1st Respondent-Respondent Premadasa that had been placed before this court (page 66 of the brief) which states as follows.

Q -: තමන් අතයට හෝ..... කීඩමන්ට බදු දුන්නා

A-: කට වචනෙන් බදු දුන්නා

This clearly establishes that the 1st Respondent, the tenant cultivator had sublet the tenancy to the Petitioner.

Impugned order

The Petitioner submitted the impugned order marked as "Y" however the Respondents contended that the said purported order tendered by the Petitioner is only a part of the order and tendered the complete order marked as 3R2 to which the learned presidents Counsel appearing for the Petitioner did not object.

The Petitioner's main contention was that he has established that he had cultivated the said paddy field from 1998 and that he had cultivated the said land in the capacity of a tenant cultivator on the basis that the original tenant cultivator had relinquished his tenancy rights. He further argued that he cultivated with the consent of the owner who was one Somapala. It was

[3] Section 3

the contention of the Petitioner that the Commissioner has failed to consider the evidence placed before him which rebuts the entry in the paddy lands register and the Respondent's argument that the tenant cultivator is the 1st Respondent Premadasa. The Learned President's counsel has submitted a plethora of judgments on rebuttal of *prima face* evidence and submitted that the Commissioner's failure to consider the Petitioner as the tenant cultivator in arriving at his order should be quashed as the Commissioner had come to an erroneous conclusion in violation of section 7 (10) of Act No 46 of 2000.

At this stage, keeping in mind that this is a writ application and not an appeal, the court will consider the complaint made to the Commissioner General by the Complainant-Respondent and the relief prayed. Especially prayers I and II which reads as follows;

I. ඉහත අංක 02 දරණ ඡේදයේ සඳහන්, "අඳ ගොවියා" විසින්, 2000 අංක. 46 දරළණ ගොවිජන සංවර් ධන පණතේ 07 (10) වගන්තිය සමග කියවෙන අනෙකුත් විධි විධාන වලට පටහැනිව, "අතුරු බදු දීමන්' කර ඇති හෙයින්,
01 වගඋත්තරකරුගේ "අඳ අයිතිය" අවලංගු සහ ශූන්‍ය බලරහිත බවට නියොගයක් ලබා දෙන ලෙසද

II. එකී නියෝගයට අනුව, 2000 අංක 46 දරණ ගොවිජන සංවර් ධන පණතේ 08. වගන්තිය සහ 08.(1) සහ (2) උප වගන්ති අනුව අදාල මහේස්ත්‍රාත් අධිකරණයේ නඩු පවරා 01.02. වගඋත්තරකරුවන් සහ ඔවුන් මගින් අයිතිවාසිකම් තියන සියලු දෙනා ම නෙරපා හැර, හිස් සහ නිරවුල් භුක්තිය ලබා දෙන ලෙසට නියෝගයක් ලබා දෙන ලෙසද,

In view of the complaint of the Complainant Respondent which is marked as 3R1 the complaint before the Commissioner was to determine whether the 1st Respondent G H Premadasa had in violation of Section 7(10) of the act had sublet the tenancy rights. If so, to cancel the tenancy rights of the 1st Respondent Premadasa and to obtain procession of the paddy field. As submitted the relevant provision that will resolve this issue is the proviso to section 7(10) of the Act. The said section reads as follows;

"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 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 extent by reason of his being the cultivator thereof, the sub tenant'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-

III. Obtains the consent in writing of the owner of such extent of paddy land; and

IV. 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 subtenant 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."

The relief prayed by the Complainant-Respondent is actually to terminate the 1st Respondent G M Premadasa's tenancy and for subsequent eviction of 1st and 2nd Respondents to the application before the commissioner, for the violations of the provisions of the act. As stated elsewhere in this judgment and after considering the proceedings before the Commissioner that has been submitted to this Court, it is pertinent to note that Premadasa, the 1st Respondent-Respondent himself has conceded that he is no longer cultivating the said land. He himself has conceded that he has sublet to the Petitioner. (Page 66 of the brief). No documentary proof has been submitted to demonstrate that the owner's consent had been obtained prior to the Petitioner commencing cultivating the paddy field. The issue before the Commissioner had been not to determine whether the Petitioner was the tenant cultivator, but to determine, whether there had been a violation of the provision and the proviso to section 7(10) of the Agrarian Development Act. In this context and in view of the material placed before this Court, we find the Petitioner has failed to demonstrate any substantial ground to obtain the relief in the nature of a writ of certiorari.

Has the Petitioner been given a fair hearing?

The Petitioner at the argument stage did not pursue the contention that the order subsequent to the inquiry had been arrived at violating the doctrine of *audiultrempartem*. However, this Court observes that the parties were not at variance on the fact that there had been an inquiry. The Petitioner had been afforded the opportunity to cross-examine the complainant and also the parties had filed their respective written submissions. The Petitioner himself had submitted to the Court the copy of the proceedings. The inquiring officer had come to a decision subsequent to the proceedings, none of these facts were contested by the Petitioner. Though the Petitioner contended that the inquiring officer had failed to consider the submission made by the Petitioner but had arrived at the decision based only on the Complainant-Respondents' evidence, for the reasons stated above, this Court cannot agree with the said submission.

Suppression of material facts and lack of *uberima fides*

Respondents took several preliminary objections pertaining to the maintainability of this application. Mainly on suppression of material facts and lack of *uberima fides*. They submitted that there had been an inquiry against the 1st Respondent for non-payment of rent to the

Complainant Respondent in the year 2000. The proceedings of the said inquiry had been marked as 1X1. The said proceedings have been instituted by Somapala Mendis and the Complainant-Respondent against the 1st Respondent-Respondent Premadasa. At the said inquiry the 1st Respondent-Respondent had admitted that he has not paid the rent for the 1999 Yala season and he had promised to pay the rent and the arrears rent from the 1999/2000 harvest. This clearly establishes that even in the year 2000, the tenant cultivator had been Premadasa, the 1st Respondent-Respondent. Further, as per document 1X2 the 1st Respondent-Respondent Premadasa had paid the arrears rental on 17.10.2000. These two documents establish that Premadasa had been the tenant cultivator in the year 2000 and contradicts the Petitioner's position that he had been the tenant cultivator since 1998. The Petitioner has failed to give any explanation pertaining to this contradiction. This Court observes that the Petitioner has failed to disclose these documents to the court.

The Petitioner is seeking a remedy by way of a writ from this Court. It is trite law that a party who seeks an equitable remedy should come with clean hands. In exercising the said discretionary remedy, the court expects the party who invokes the jurisdiction of the court to make full and fair disclosure of all material facts before this Court. Even after 1X1 and 1X2 had been tendered to this Court by the Respondents, the Petitioner has failed to explain his failure to disclose these two documents. The Petitioner failed to give any explanation even at a time of argument on this contradiction, mainly the 1st Respondent's representation in the year 2000, that he was the tenant cultivator. The said two documents do not demonstrate the Petitioner's version that by the year 2000 the 1st Respondent had ceded his tenancy rights and the Petitioner had become the tenant cultivator. This becomes a material suppression and a misrepresentation given the circumstances that one of the complainants as reflected in 1X1 is Somapala, who is alleged to have given consent to the 1st Respondent to cede his rights as the tenant cultivator and given the consent to the Petitioner to cultivate.

Collettes Ltd. V. Commissioner of Labour And Others (1989) 2 SLR 16 ***"It has been repeatedly pointed out by our courts that a full and fair disclosure of all material facts should be placed before the Court when an application for a Writ of Injunction is made and the discretionary powers of the courts are invoked in that regard…….Thus it is essential that, when a party invokes the Writ jurisdiction or applies for an Injunction to this Court* all facts must be clearly, fairly and fully pleaded before the Court, so that Court would be made aware of all the relevant matters. It is necessary that this procedure must be followed by all litigants who come before this Court in order to ensure that justice and fairplay would prevail."***

Alphonsu Appuhamy v Hettiarachchi (1973) 77 NLR 131 ***"when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberrima fides."***

In **Biso Menika Vs Cyril De Alwis & others 1982 (1) SLR 368** it was held ***"A person who applies for the extra-ordinary remedy of writ must come with clean hands and must not suppress any relevant facts from Court. He must refrain from making any misleading statements to Court".*** The importance of coming to court with clean hands was recently stressed in **Orient Pearl Hotels vs Cey Nor-Foundation Limited & others CA Writ 226/2018 decided on 02.08.2021** where it was held ***"It is settled law that a party seeking prerogative relief should come to court with clean hands. The expression is derived from one of equity's maxims – He who comes to Equity must come with clean hands."***

In our view, we find that the Petitioner by his own acts has disentitled himself to the relives prayed. Namely, he has failed to demonstrate that he has taken any meaningful steps to amend the paddy land register and get himself registered as the tenant cultivator thus, depriving him of any legal right. We also find that in view of documents 1X1 and 1X2 and also of documents 1R1 – 1R5 marked before the Commissioner, and to which the Court's attention was drawn, the Petitioner's inability to submit any receipts issued to him for payment of rent up to the proceedings being filed before the Commissioner, defeats the Petitioner's argument that he is the tenant cultivator and had been cultivating since 1998. Further in view of the above-mentioned marked documents and in view of the Complainant-Respondent's denial of the Petitioner being the tenant cultivator, the Petitioner's contention of him cultivating the land since 1998 as the tenant cultivator becomes a disputed fact.

Another instance the Petitioner has failed to explain is, as submitted by the learned state Counsel, the document 1X2 is an acknowledgment issued by the Complainant-Respondent. In the said document the 1st Respondent-Respondent had signed when he was handing over the rent in his capacity as the tenant cultivator. One of the witnesses in this transaction of handing over the rent is the Petitioner. This clearly establishes that in the year 2000 the tenant cultivator had been the 1st Respondent-Respondent. The Petitioner has failed to explain how he attested as a witness for handing over of the rent by the 1st Respondent-Respondent if the Petitioner was the tenant cultivator as alleged by himself. The Petitioner has failed to explain his failure to disclose this document. Thus, the objection on suppression and misrepresentation succeeds.

We also find that the Petitioner has failed to demonstrate any illegality, irrationality or procedural impropriety of the proceedings before the Commissioner General or in the impugned order.

This Court also observes that the Petitioner has failed to demonstrate that he had requested that he be determined as the tenant cultivator and accordingly to amend the Register and that request had been refused. In light of the above observation, and in the absence of a refusal, this Court is of the view that prayer (C) of the petition has to fail. In the case of **Ratnayake and Others v C.D Perera and others (1982) 2 SLR 451 at 456,** it was held, that ***"The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the Superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform,***

mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has a sufficient legal interest."

Accordingly, in the absence of a refusal, this Court will be reluctant to grant a writ of mandamus.

In any event prayer (C) of the petition has to fail, as this Court observes that in the absence of the Petitioner taking any steps to amend the entries in the register and to insert his name as the tenant cultivator and considering the contradictory evidence that has been demonstrated by 1X1 and 1X2, in our view, the Petitioner has also failed to demonstrate that he has a sufficient legal right to be the tenant cultivator as opposed to being a sublessee of the 1st Respondent-Respondent. When the Petitioner has failed to demonstrate his legal right to be considered as the tenant cultivator, the court will be reluctant to issue a writ of mandamus. In this instance, we do take the guidance of **Credit Information Bureau of Sri Lanka Vs Messrs Jafferiee & Jafferjee (Pvt) Ltd (2005) 2 SLR 89** where it was held, ***"There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedents the issue of Mandamus appear to be:***

(a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (R v Barnstaples Justices)

(***b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.***

(c) The legal right to compel must reside in the Applicant himself (R v Lewisham Union)

(d) The application must be made in good faith and not for an indirect purpose

(e) The application must be preceded by a distinct demand for the performance of the duty

(f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.

(g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial, and effective

The counsel appearing for the Respondents raised another objection on a want of necessary parties and contended that the 4th Respondent had ceased to hold office and the Petitioner had failed to take any meaningful steps to effect substitution before the matter was taken up for argument. It is the contention of the Complainant Respondent that in prayer (C) the writ of mandamus is sought against the 4th Respondent and in the absence of the named 4th Respondent, this relief has to fail. The Petitioner has failed to give any response to this objection.

In **Martin and another Vs. Assistant Commissioner of Agrarian Services and 2 others [2011 (2SLR)]** it was held, ***"The 2nd and the 3rd respondents are Assistant Commissioner of Agrarian Services. They are not natural persons. In Haniffa vs Chairman Urban Council, Nawalapitiya Thmabiah J held: "A mandamus can only issue against a natural person who holds a public office. Accordingly in an application for a writ of mandamus against the***

Chairman of an Urban Council, the petitioner must name the individual person against whom the writ can be issued."

The Petitioner has sought the relief of a writ of mandamus against the 3rd and 4th Respondents. In our view, the Petitioner should be vigilant to take steps to make the necessary amendments and substitute the correct party against whom he can have an effective judgment. Specifically, when seeking the relief of a writ of mandamus. However even after it was brought to the notice of the court and to all parties, there was no application to amend the caption and for substitution. Thus, the Respondents' submission that the said relief even if granted would be futile, also succeeds.

Accordingly, for the aforesaid reasons set out above in this judgment, this Court refuses to grant the reliefs prayed in the petition and we dismiss this application without cost.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree.

Judge of the Court of Appeal