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

In the matter of an application for a mandate in the nature of Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

D. P. Mathangaweera

Rathnapura Road, Palugaswala,

Lunama.

Court of Appeal Case No:
CA/WRIT/365/2017

PETITIONER

Vs.

1. Chaminda Ekanayake
   Assistant Commissioner of Agrarian Development,
   District office,
   Hambantota.

1(a). A. S. W. Dahanayake
   Assistant Commissioner of Agrarian Development,

2. T. A. Nimal
   Seenimodaramulla,
   Rotawala,
   Ambalantota.

3. Chandana Karunathilaka
   Agrarian Development Officer
   Agrarian Services Centre,
   Lunama

3(a). W. A. Remani
   Agrarian Development Officer

RESPONDENTS

Before:	C.P Kirtisinghe, J Mayadunne Corea, J
Counsel:	Ranga Dayananda for the Petitioner Lakdev Unamboowe for the 2nd Respondent Medhaka Fernando S.C for the 1st to 3rd Respondents
Argued on:	27/09/2022
Written Submissions:	Tendered by the Petitioner on 10/10/2022 Tendered by the 2nd Respondent on 11/10/2022 Tendered by the 1st to 3rd Respondents on 04/09/2020
Decided on:	31/10/2022

Mayadunne Corea J

The facts of the case are briefly as follows, the Petitioner's grandfather Don Saraneris Mathangaweera is alleged to be a tenant cultivator of paddy land called 'Siyabalagahakumbura' which has an extent of 4 acres. It is the contention of the Petitioner that the said tenant cultivator's name has been registered in the agricultural land registry. It was also his contention that, in all official documents the grandfather's name is reflected as D.N Mathangaweera. This will be dealt with elsewhere in this Judgement.

In 2017, the 2nd Respondent has lodged a complaint against the Petitioner stating, that the Petitioner is interfering with the cultivation done by the 2nd Respondent. The said complaint had been lodged by the 2nd Respondent, the tenant cultivator. After the complaint under section 90 of the Agrarian Development Act No.46 of 2000, the Petitioner has been notified to appear for an inquiry, and

subsequent to the inquiry where both parties had made submissions and tendered documents, an order had been delivered. In the said order, the Petitioner and one S. A. Jagath Chandana had been ordered not to interfere in the cultivation of Siyabalagahakumbura and with the rights of its tenant cultivator, the 2nd Respondent. Hence, this application for a writ of certiorari.

Petitioner's complaint to Court

The Petitioner contends that,

- there was no proper inquiry held,
- the inquiry was in violation of the rules of natural justice,
- the order has no force or avail in law as it is devoid of reasons, thus it amounts to an arbitrary, irrational, and illegal decision.

The Petitioner among other things has sought the following reliefs,

(b) Issue a mandate in the nature of Writ of Certiorari quashing the purported decision of the 1st Respondent dated 11th October 2017 as contained in P5 & P6.

(d) Issue a mandate in the nature of Writ of Mandamus against the 1st and/or 3rd Respondents to hold an inquiry in terms of the provisions of the said Agrarian Development Act to determine the lawful tenant cultivator of the 'Siyabalagahakumbura' which is the subject matter of this application.

The Respondents in their objections took several preliminary objections for the maintainability of this case. The Court finds that the 1st Respondent, as well as the 2nd Respondent, has taken up the following objections,

- The 2nd Respondent has objected to the jurisdiction of the Court,
- The Petitioner has no locus standi,
- The Petitioner has failed to comply with the legislative remedies provided in the Agrarian Development (Amendment) Act No. 46 2011
- The Petitioner is guilty of suppression of material facts.

The 2nd Respondent further contends that the application has to fail as it is misconceived in law and is futile. The 1st Respondent additionally, has raised that the Petitioner has failed to name necessary parties to this application and also has failed to come with clean hands. This Court will deal with these objections at a later stage.

It is common ground that the Petitioner had been informed of an inquiry under section 90 of the Agrarian Development Act, and both parties had been present and had made their respective submissions and tendered supporting documents at the said inquiry.

In the caption of the petition, the Petitioner has pleaded for a writ of certiorari against the 1st Respondent. In the body of the petition too, the Petitioner pleads to quash the intended order P5 for the reasons stated therein. However, without any reasons pleaded in the body, in the prayer, the Petitioner has pleaded not only for a writ of certiorari but also for a writ of mandamus against the 1st and 3rd Respondents.

Inquiry

The Petitioner's main contention is that he had been summoned in 2017 for an inquiry against him, for interfering with the cultivation rights of the 2nd Respondent. He had been notified to appear before an inquiring officer for a preliminary inquiry held on 12.06.2017. The said notice is dated 24.05.2017. However, the Petitioner contends that he had not received the said notice on time. It is his contention that he had not received the notice till the 17th of June thus he had not been present at the inquiry held on 12.06.2017.

It is pertinent to note, that the Petitioner has failed to tender the copy of the said notice to this Court, nor any document to prove the date he received the notice. The Petitioner's main contention is that on the 12th of June, the Petitioner has not been present and the 1st Respondent initially had decided to postpone the inquiry due to the absence of the Petitioner, but subsequently had allowed the 2nd Respondent to make submissions and also support it by documents on the application of the 2nd Respondent, which the Petitioner argues is a violation of rules of natural justice. After the

said submission was made on 12.06.2017 (P2), the inquiring officer also obtained a statement from the owner of the paddy field.

It is the contention of the Petitioner, that he had informed the inquiring officer of the non-receipt of the letter notifying him to be present for the inquiry and therefore had informed the inquiring officer by his letter dated 19.06.2017 to grant a fresh date for inquiry. This request had been allowed and the Petitioner too had been given an opportunity to make submissions and tender supporting documents. It was also submitted, that the inquiring officer after the receipt of the Petitioner's letter, had informed him to be present for the inquiry on 03.07.2017 and had said that if the Petitioner is unable to be present on that day, he would make a decision on the available evidence. This clearly demonstrates that after the 2nd Respondent's evidence, the 1st Respondent had not made a decision but had granted time to hear the Petitioner. The said inquiry had subsequently been refixed for the 23rd of October but due to the complaint made by the 2nd Respondent, it had been advanced to the 14th of August 2017. The Petitioner had received the copy of the said letter notifying the date on 12.07.2017 however, as the said date was not suitable for the Petitioner's attorney-at-law, he had moved to another date on that day, and the inquiry had been postponed to 23rd of August 2017.

The Petitioner had failed to tender to this Court, the correspondence he had with the inquiring officer, of him informing of the dates of the inquiry. It is his contention that under the circumstances, the 1st Respondent holding the inquiry under section 90 of the Act had failed to hold a proper inquiry and also had violated the rules of natural justice by not informing him of the dates, thereby preventing him from being heard. Hence, it is his contention that the Respondents were guilty of not giving a hearing to the Petitioner. This Court finds that it cannot agree with the argument of the Petitioner that he had not been heard before the decision in P5 had been arrived at. We come to this conclusion on the basis that the Petitioner, as well as the 2nd Respondent, had been given an opportunity to make submissions and also to substantiate their submission with supporting documents that had been marked and tendered to the inquiring officer. We also find that the Petitioner had moved for another date stating that his attorney-at-law is not free to attend the inquiry, which demonstrates that the Petitioner had been represented by an attorney-at-law (para 11 of the petition).

At the argument stage, the Petitioner also argued that he had not been given an opportunity to cross-examine, and submitted that it again is a violation of the rules of natural justice. We are unable to agree with this submission as well, as this is only an inquiry under section 90 under the Agrarian Development Act, pertaining to an interference by a 3rd party to the cultivation right of the owner cultivator or the occupier. As for the Petitioner's submission that he had not been given a right to cross-examine, this Court observes that the Petitioner nor the 2nd Respondent had sought to cross-examine any witnesses. In the absence of an application to cross-examine, the Petitioner cannot be heard now to complain that he had been deprived of the right to cross-examine. It is also pertinent to note, that there is no material to demonstrate that the inquiring officer had called for evidence by witnesses under section 90, nor have the parties who appeared before the inquiring officer applied to call for witnesses. Therefore, on this ground too, the Petitioner's contention of being deprived of cross-examination has to fail as the question of a right to cross-examination would not arise in the absence of witnesses.

It is also pertinent to note that none of the parties had challenged the accuracy and the authenticity of the documents that have been tendered. However, this Court also observes that in the original inquiry before the inquiring officer, the Attorney-at-law for the Petitioner had disputed the document marked as P3 at the initial inquiry. This too had been done on the basis that there was no inquiry before the said amendment was affected to the document marked P3 at the inquiry which is the paddy land register. However, it appears that the Petitioner has failed to dispute any of the documents that have been tendered other than the document marked P3, before the inquiring officer.

The Petitioner's next contention was, that the 1st Respondent has failed to give reasons for his purported decision. The order has been given on a complaint made by the 2nd Respondent under section 90 of the Agrarian Development Act, No. 46 of 2000 whereby the 2nd Respondent had complained that his rights to cultivate the paddy field had been violated by the actions of the Petitioner and another who accompanied him. This would be an appropriate time to consider the said section of the Agrarian Development Act. The said section reads as follows,

Section 90 (1) 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:

Provided further that an order issued under subsection (I) shall not prejudice the right title or interest of such person, cultivator or occupier to such land, crop or livestock in respect of which such order is made.

(2) For the purpose of ensuring compliance with the provisions of an order under subsection (1) the Commissioner General may seek the assistance of a peace officer within whose area of authority such agricultural land in respect of which such order is made lies, and it shall be the duty of such Peace Office to render such assistance as is sought and the Peace Officer may for such purpose use such force as may be necessary to ensure compliance with such order.

(3) An order under subsection (1) shall be binding on the person in respect of whom it is made until set aside by a court of competent jurisdiction.

It is also pertinent to note that, in our view, section 90 of the Agrarian Development Act is meant to provide immediate relief for cultivators or occupiers to continue with their cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce, or the right to use the agricultural road of such owner cultivator or occupier. It is clear that the section does not contemplate a protracted inquiry, as according to the proviso to the section, this section is not meant to evict any person from agricultural land and an order made under the section will not prejudice the right title of such persons, cultivator or occupier. It observed that the inquiry held under section 90, is not an inquiry to determine the tenant cultivator.

It is further observed by this Court, that the Petitioner nowhere has denied the allegation that he has interfered with the rights of the 2nd Respondent. The Petitioner has pleaded that for fuller disclosure, there is a pending case before the Magistrates Court of Hambantota against the Petitioner for allegedly assaulting the 2nd Respondent and that now it has been referred to the

Mediation Board. This buttresses the 2nd Respondent's submission that the Petitioner by unlawful acts, had interfered with his cultivation rights and that he had to make a complaint to the police against the Petitioner which has now resulted in a Magistrates Court proceeding.

At this stage, the Court will advert to the impugned order reflected in P5. The said order dated, 11.10.2017 (P5) is against the Petitioner and another S. H. Jagath Chandana. The said order reads as follows,

".....නැමැති අක්කර 04ක කුඹුරු ඉඩමේ නීත්‍යානුකූල අදගොවියා වූ අම්බලන්නොට, රොටවල, සීනිමොදරමුල්ල පදිංචි ටී.ඒ.නිමල් යන අයගේ වගාඅයිතිවාසිකම් ඔබ විසින් උල්ලංඝනය කර ඇති බවට ඉහත කරුණට අදාලව මා විසින් කරන ලද පරීක්ෂණයේදී තහවුරු විය.

එබැවින් ටී.ඒ නිමල් මහතාට "සියඹලගහකුඹුර" නැමැති කුඹුරු ඉඩම වගාකිරීම පිණිස හා එය භුක්ති විඳීම සම්බන්ධව ඇති අයිතිවාසිකම් වලට අවහිර නොකරන ලෙසට මෙයින් නියම කරමි..."

When we consider this order, the Court is mindful of the fact that the inquiring officer is not a person who is conversed with the law of evidence and is not an attorney-at-law, in fact in this instance, it was the Assistant Commissioner of Agrarian Development who has been called under section 90 to ascertain whether any person has interfered or was attempting to interfere with the cultivation rights of the owner cultivator or occupier.

It was common ground that this whole inquiry commenced with the 2nd Respondent submitting a complaint under section 90 complaining that his cultivation rights are being violated by the Petitioner. The inquiring officer under this section had to inquire whether there is interference and whether that interference will result in damage or loss of crop or livestock and he is required to give an order for the protection of the cultivation rights. We find that the said order in P5 has addressed this requirement. As this is a writ application, this Court is not there to consider the legality of the order. In our view, the order comprises of required reasons and is in compliance with section 90 of Act no. 46 of 2000.

As the Respondents submitted, this Court observes, that the order in P5 only orders the Petitioner and one Jagath Chandana not to interfere with the cultivation rights of the 2nd Respondent.

The Respondents also contended that a section 90 inquiry does not determine the title or the substantive rights of a party. As per the wording, it is clear that to lodge a complaint under section 90, the title to the paddy field is not a requirement as it can be done by an owner cultivator or occupier of agricultural lands. The said section only attempts to preserve the cultivating rights of the owner cultivator or occupier of agricultural lands and safeguard them from any interference pertaining to the acts that are stipulated in the said section.

Locus standi of the Petitioner

The 2nd Respondent has challenged the Petitioner's application on the basis that there is no locus standi for the Petitioner to invoke the writ jurisdiction. It is the contention of the 2nd Respondent that the Petitioner has failed to disclose the basis for his entitlement to the property in question and if the Petitioner is an outsider or a third party who has no entitlement to the cultivation of property, then he will have to fail in this application. In response, the Petitioner submits that as per document P1, the tenant cultivator's name is depicted as D. N. Mathangaweera. It is the contention of the Petitioner that the said D. N. Mathangaweera is his grandfather. D. N. Mathangaweera had a son called D.M. Mathangaweera, the father of the Petitioner. To substantiate this position the Petitioner has tendered to this Court, the extracts of the agricultural land register (P1) which depicts the tenant cultivator's name as D.M Mathangaweera, the death certificate of his grandfather marked as P1(a) and the marriage certificate of his father marked as P1(b) and his birth certificate as P1(c). However, this Court observes that the entry in P1 has been cut off. This position has also been considered by the inquiring officer who held the original inquiry. In any event, we find there is a discrepancy in the Petitioner's claim, as his own documents contradict his contention. Even though document P1 describes the tenant cultivator as D.N Mathangaweera, the death certificate of Petitioner's grandfather names the deceased as D. Saraneris Mathangaweera. Extracts of the marriage registry of his father which was marked as P1(b) also gives the Petitioner's grandfather's name as D. Saraneris Mathangaweera.

As correctly submitted by the Respondents, D. Saraneris Mathangaweera's name is not to be found in any of the extracts nor the agricultural land registry. To overcome this, the Petitioner in his petition has submitted that D.N Mathangweera and D. S Mathangweera refer to the same person. However, we find this certification is given after the death of Mathangweera by one of his

grandchildren. This contention of the Petitioner has been challenged by all the Respondents and in the absence of any independent verification as to whether the D.N Mathangweera and D.S Mathangweera are one and the same, it becomes a disputed fact.

Accordingly, the Petitioner is trying to establish his locus based on the fact that his grandfather was the tenant cultivator. Therefore, the Petitioner is trying to establish his right to be the tenant cultivator based on disputed facts which have to be adjudicated not before this Court.

In the case of **Dr. Puvanendran and another v Premasiri and two others (2009) 2 SLR 107** held that ***"The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.*** In **Kumudu Akmeemana Vs Hatton National Bank & others CA writ application No.72/2"020, decided on 30.4.2021** it was held, ***"The jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact."***

In the case of **Thajudeen Vs Sri Lanka Tea Board & Another (1981) SLR 471,** it was held that ***"where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue."***

Effect of amending Act 46 of 2011

The Petitioner also relied on section 1D of Act No 46 of 2011 which is the amendment to Act No. 46 of 2000 and submitted that in the absence of any nomination of a tenant cultivator, the rights of his grandfather devolve on him. It is an opportune time to consider the said section.

Section 1D. (1) The rights of a tenant cultivator under the principal enactment in respect of an extent of paddy land shall in the event of the death or permanent disability of such tenant cultivator, devolve on the surviving spouse of such tenant cultivator and failing such spouse, on only one of the children of such tenant cultivator:

Provided that in the latter instance, if there is more than one child, the child whose sole means of living is cultivation, shall be preferred to the others:

Provided further, if there is more than one child, whose sole means of living is cultivation, the oldest from amongst such children shall be preferred to the others.

We find that when a tenant cultivator dies without nominating a successor, as stipulated under section 1D (1), the rights of the tenant cultivator devolve on the surviving spouse. Failing that, it will devolve into one of the children of the tenant cultivator. According to the proviso to the section, it will devolve on the child whose sole means of living is cultivating and if there is more than one child, the oldest is preferred over the others. Even if we are to consider that D.N Mathangaweera and D.N Saraneris Mathagaweera are one and the same as contended by the Petitioner, he has failed to establish that upon the death of D.N Mathangaweera, the rights had devolved on the spouse or to his son whom the Petitioner says is his father.

It is observed by this Court that his father's name is not reflected in the paddy land registry. Petitioner has failed to provide to this Court with any material to establish that his father's sole means of living was cultivation to qualify under the proviso of 1D (1) or that his father was the oldest among other children whose sole living was cultivation. Accordingly, we are unable to agree with the submission of the learned Counsel for the Petitioner, that under section 1D (1), the rights of the tenant cultivator devolve on him. In any event, section 1D contemplates the tenant cultivator's son and not the grandson. Thus, in our view, the Petitioner's contention that he is the grandson who has to automatically succeed the grandfather's tenant cultivator rights, has to fail.

We also find the Petitioner has failed to submit any independent evidence to demonstrate that in fact, he had been cultivating the land in the capacity of a tenant cultivator after the demise of his grandfather. The best evidence the Petitioner could have submitted to this Court is the extract of the agricultural land registry, which should demonstrate who the tenant cultivator is. This would have attracted the presumption afforded under section 53 (6) of the Agrarian Development Act No. 46 of 2000. In this instance, we find the said agricultural land registry depicts the name of the 2nd Respondent and not the Petitioner. We also observe that the Petitioner's argument under Act 46 of 2011, whereby he argues that the rights of the tenant cultivator would devolve under section 6 of the amending Act, is not tenable as once again the Petitioner's father's name is not reflected in the agricultural land registry.

Suppression of material facts

The 2nd Respondent also took up an objection on the suppression of material facts. It is the contention of the Respondents, that even the name of D.N Mathangaweera who is depicted as the tenant cultivator in P1, issued in 1992 has been cut off. It is the contention of the Respondents, that subsequently T. A Nimal who is the 2nd Respondent, has been inserted into the column as the tenant cultivator in the paddy land registry. This is demonstrated by two documents that the Petitioner himself has marked as P2, which are the land registry extracts of 2016 and 2017 respectfully, and also the Respondents have submitted the document 2R3 G which again is an extract of the agricultural land register for the year 2018 which again depicts the 2nd Respondent's name as the tenant cultivator. Further, the Respondents have submitted a copy of the land register dated 1992 which was also marked as P1, however, we find there are serious discrepancies in the two paddyland registry extracts namely, the document 2R1 has an endorsement which says the entry in the said page is struck off. The entry that has been struck off is the name of D.N Mathangaweera as the tenant cultivator.

The 2nd Respondent has also submitted to this Court, a letter by the owner of the paddy filed marked 2R3B whereby she has admitted that the 2nd Respondent is the tenant cultivator of her paddy field. The 2nd Respondent also tendered to this Court, two affidavits submitted by tenant cultivators of the adjoining paddy field marked 2R3B and 2RC whereby the said tenant cultivators have stated that the 2nd Respondent is the tenant cultivator of the paddy land in dispute and that he has been cultivating the said land for the past 26 years. The 2nd Respondent also submitted a letter issued by the Farmers Association of the area marked 2R3E, which certifies that the 2nd Respondent is the tenant cultivator of the paddy field called Siyabalagahakumbura. The agriculture Assistant Officer of the relevant area also has submitted a letter which states that the 2nd Respondent is the tenant cultivator of the said paddy land.

Considering all these documents the 2nd Respondent contends that the Petitioner has suppressed material facts by not disclosing that even the name D.N Mathangaweera has been cut off from the agricultural land registry and has misrepresented facts to state that he was the tenant cultivator. In

view of the dispute pertaining to the tenant cultivation, it is also pertinent to note that if the Petitioner was the tenant cultivator, as claimed, he had all the time to register his name as the tenant cultivator as per the provisions of the Agrarian Development Act. The Petitioner has failed to give any explanation for his failure to do so. There is no material submitted to this Court to demonstrate that the Petitioner has submitted an application to the Commissioner General to ascertain who the tenant cultivator is.

Considering all the documents that have been submitted to this Court, this Court is of the view that the Petitioner has failed to establish that he has a locus to file this application. We are inclined to accept the 2nd Respondent's objection that the Petitioner has no locus standi to invoke the writ jurisdiction of this Court.

We find the Petitioner has failed to establish any grounds where the discretionary remedy of writ jurisdiction can be dispensed favorably towards the Petitioner. Coming to this conclusion, we take the guidance of the case **Jayaweera v Assistant Commissioner of Agrarian Services per Ratnapura (1996) 2 SLR 70** ***"A Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine…"*** Further on page 419 of the same judgment, His Lordship has further identified the grounds upon which a Writ of certiorari may be issued. "…….. *The grounds for issue of writs of certiorari are;*

(a) Acting in excess of jurisdiction or ultra vires;
(b) Breach of a mandatory provision of rule;
(c) Breach of rules of natural justice;
(d) Error of law on the face of the record …."

Accordingly, the Petitioner has failed to impugned the grounds that are enumerated in the above to obtain the relief he has sought from this Court.

This will take us to the Petitioner's next prayer where he is seeking a writ of mandamus. As stated elsewhere, we find the Petitioner has not pleaded any grounds whereby he is entitled to the writ of mandamus in the body of the petition. The Petitioner has failed to establish that he had sought an

inquiry in terms of the Agrarian Development Act 46 of 2000, seeking the Commissioner General to hold an inquiry to determine who the lawful tenant cultivator of Siyabalagahakumbura. He has failed to demonstrate that the said request has been refused by the 1st Respondent.

In **Rathnayake and other v C.D Perera and others (1982) 2 SLR 451** where it was held that a mandamus would be available when a public officer who is entrusted to perform a public duty had refused to perform. It was also held in **Rasammah & another vs A.P.B.Manmperi 65 NLR V 77 at page 313** Walgampaya, J quoting S.A.de Smith held, ***"The general rule is that the applicant before moving for the order, must have addressed a distinct and specific demand or request to the Respondent that he performs the duty imposed upon him, and the Respondent must have unequivocally manifested his refusal to comply."***

Considering all the above facts, we see no reason to quash the decision reflected in P5 and for the reasons stated above, the Petitioner's application for a writ of mandamus too has to fail.

Accordingly, for the aforesaid reasons, we refused to grant the writs sought by the Petitioner and we dismiss this application without costs.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree.

Judge of the Court of Appeal