

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

In the matter of an application for an Appeal under and in terms of Article 128(4), read with Article 154P (6) and 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with Section 5(c)(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No.54 of 2006.

**CA (PHC) 0167/2018**

P.H.C. Hambantota

Case No. HCWA. 12/2013

Agrarian Services

Inquiry No.42/P/MISC./Ambagahakumbura

Sumith Amarawickrama  
4 Ela, Siyanmbalagaswila  
Beragama, Ambalantota.

**Petitioner**

**Vs.**

1. Assistant Commissioner for Agrarian Services Development,  
District Office of Agrarian Services Development,  
Hambantota.

2. Somaseeli Amarawickrama  
“Siri Amara”, Ambalantota.

3. Hon. Attorney General  
Attorney General’s Department,  
Colombo 12.

**Respondents**

**And Now Between**

Sumith Amarawickrama  
4 Ela, Siyanmbalagaswila  
Beragama, Ambalantota.

**Petitioner-Appellant**

**Vs.**

1. Assistant Commissioner for Agrarian  
Services Development,  
District Office of Agrarian Services Development,  
Hambantota.

2. Somaseeli Amarawickrama  
“Siri Amara”, Ambalantota.

3. Hon. Attorney General  
Attorney General’s Department,  
Colombo 12.

**Respondent-Respondents**

**BEFORE:** PRASANTHA DE SILVA, J.  
K.K.A.V. SWARNADHIPATHI, J.

**COUNSEL:** Sapumal Bandara with Gangalali De Silva Dayarathna  
For the Petitioner-Appellant

M.C. Jayarathna (P.C.) with M.D.J. Bandara  
For the 2<sup>nd</sup> Respondent-Respondent

**Argument:** By way of written submissions

**Date of Judgment:** 14.12.2022

**K.K.A.V. SWARNADHIPATHI, J.**

### **JUDGMENT**

The Petitioner-Appellant, who will be referred to as the **Appellant**, filed case No. HCWA/12/2013 in the High Court of Hambantota seeking;

- *An order to temporally suspend the order of eviction dated 18.11.2013 issued by the 1<sup>st</sup> Respondent in par with Section 8 of the Agrarian Development Act No.46 of 2000.*
- *The issuance of a Writ of Certiorari quashing the effects of the order of eviction dated 18.11.2013 issued by the 1<sup>st</sup> Respondent in par with Section 8 of the Agrarian Development Act.*
- *An order directing the 1<sup>st</sup> Respondent mandating the submissions of documents and dockets relating to inquiry No. Pra/86/1129 and 42/Pra/Misc/Ambagaha Kumbura.*

On notice, the Respondent appeared before the High Court and filed their objections. After hearing both parties, the learned High Court Judge of Hambanthota rejected the Petition of the Petitioner on 29<sup>th</sup> of August 2018. Aggrieved by that decision, the Appellant had come before this Court. Both parties agreed to dispose of the case on written submissions filed.

The Petitioner and his father had possessed the land called Palle Beragama Badda alias Ambagaha Kubura from 1974. In 1982 the said land was given to the 2<sup>nd</sup> Respondent by a grant under Section 19(6), read with Section 19(4) of the Land Development Ordinance No.19 of 1935.

Thereafter the 2<sup>nd</sup> Respondent filed papers against the Appellant's father seeking rent due for yield as a tenant cultivator. After an inquiry, the 1<sup>st</sup> Respondent ordered the Appellant's father to pay LKR 14,595/- as the total payment. Aggrieved by this decision, the Appellant's father had filed case No.CA/873/88 and, by order dated 15.11.1995, was ordered to pay a sum of LKR 4865/- within a month.

On 12.06.1996, the 1<sup>st</sup> Respondent issued an eviction order ordering the Petitioner's father to vacate the land. Against this order, the Appellant's father again went before the High Court and was given time to pay within two weeks. Again, another order of eviction was issued by the 1<sup>st</sup> Respondent on 18.11.2013 under Section 8 of the Agrarian Development Act. It was only after that the Petitioner filed action No. HCWA/12/2013 at the High Court of Hambantota.

According to the Appellant, he is not a tenant cultivator as he and his father had enjoyed the land from 1974. If the land belongs to the Appellant, he must clearly state how the land came to his ownership or how the possession started. When the Appellant's father agreed to pay a sum of LKR 4865/- in case No.CA/873/88, he acknowledged that he was the tenant cultivator. There is no indication to show that the Appellant's father had acted to prove otherwise. Therefore, the Appellant is estopped from saying he is not a tenant cultivator of the 2<sup>nd</sup> Respondent.

Section 6(4) of the Agrarian Development Act No.46 of 2000 read as follows: -

*“Where any person who is a permit holder holding an extent of paddy land upon a permit issued under the land Development Ordinance subject to the condition that such permit holder himself shall cultivate such extent of paddy land, leases out such extent of paddy land to a person who cultivates such extent of paddy land the person so cultivating shall not be deemed to be a tenant cultivator within the meaning of this Act.”*

Since the 2<sup>nd</sup> Respondent is not a permit holder, he has been granted the land. Therefore, the above Section will not be applicable to the 2<sup>nd</sup> Respondent. The Appellant’s argument based on this Section fails. At the time of CA/873/88, the Appellant should have argued this issue. In case No.CA873/88, the Judges of the Court of Appeal had stated;

*“The Petitioner is directed to pay the rent for the Maha season of 1985/86 within one month of the communication of this order, and if he fails to do so, the Commissioner of Agrarian Services is free to take further proceedings regarding the Petitioner under the provisions of the Agrarian Act.”*

This indicates that the Appellant cannot now deny that he is a tenant cultivator. The Appellant had not shown to this Court that there was any other judgment against the judgment mentioned above.

In the same judgment, there is enough material to show that there had been an inquiry in which the Appellant’s father had participated. The learned Judge of the Court of Appeal had observed that;

*“After the proceedings, on 08.01.1988, the Petitioner was directed to hand over the documents relied upon by him, and since he failed to do so, further notice dated 24.02.1986 directing him to submit the documents was sent out but has failed to comply with that direction”.*

This indicates that the 1st Respondent gave the Appellant's father a fair hearing. The judgment of CA873/88 had discussed this issue at length. Therefore, the argument of the Appellant fails regarding natural justice.

The learned High Court Judge had observed the orders and judgments of CA/873/88, HCA 25/96 of High Court of Hambanthota, L2559 of the District Court of Hambantota and concluded that the matter before the Court is already decided (*Res judicata*).

When the Appellant knew of all the above cases, which his father primarily filed, he should have known that he had no legal right to come on the same issue again. Therefore, we hold that the Appellant had not come before the Court with clean hands.

For the reasons discussed above, we dismiss the appeal with a cost fixed at LKR 25,000/=.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**