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

In the matter of an application for Special Leave to Appeal.

1. Hatharasinghe Arachchige Amarasena,
2. Hatharasinghe Arachchige Karunawathie,

Both of Paluwatta, Kandurupokuna, Tangalle.

Complainants

SC Appeal No: 75/2015
SC (SPL) LA No. 67/2012
CA/PHC/20/2000
HC/Hambanthota/16/98

Vs.

1. Hatharasinghe Arachchige Ranjith Premalal,
2. Hatharasinghe Arachchige Gnanasiri,
3. Hatharasinghe Arachchige Amitha Kanthi,

All of Post 3, Bolana, Ruhunu Ridiyagama.

Respondents

AND

1. Hatharasinghe Arachchige Amarasena,
2. Hatharasinghe Arachchige Karunawathie,

   Both of Paluwatta, Kandurupokuna, Tangalle.

Complainant-Petitioners

Vs.

1. Hatharasinghe Arachchige Ranjith Premalal,
2. Hatharasinghe Arachchige Gnanasiri,
3. Hatharasinghe Arachchige Amitha Kanthi,

   All of Post 3, Bolana, Ruhunu Ridiyagama.

Respondent-Respondents

4. Commissioner of Agrarian Services, Office of the Agrarian Services, Hambantota.

5. M.P.N.P. Wickremasinghe, Former Commissioner of Agrarian Services, Office of the Agrarian Services, Hambantota.

Respondents

AND BETWEEN

1. Hatharasinghe Arachchige Ranjith Premalal,
2. Hatharasinghe Arachchige Gnanasiri,
3. Hatharasinghe Arachchige Amitha Kanthi,

All of Post 3, Bolana, Ruhunu Ridiyagama.

Respondent-Respondent-Appellants

1. Hatharasinghe Arachchige Amarasena,

1A. D.A. Kaluarachchi,

2. Hatharasinghe Arachchige Karunawathie,

2A. H.G. Piyadasa,

Both of "Singhagiri", Kandurupokuna, Tangalle.

Complainant-Petitioner-Respondents

4. Commissioner of Agrarian Services, Office of the Agrarian Services, Hambantota.

5. M.P.N.P. Wickremasinghe, Former Commissioner of Agrarian Services, Office of the Agrarian Services, Hambantota.

4th and 5th Respondent-Respondents

AND NOW BETWEEN

1A. D.A. Kaluarachchi,
2A. H.G. Piyadasa,

Both of "Singhagiri", Kandurupokuna, Tangalle

Substituted Complainant-Petitioner-Respondent-Petitioners

Vs.

1. Hatharasinghe Arachchige Ranjith Premalal,
2. Hatharasinghe Arachchige Gnanasiri,
3. Hatharasinghe Arachchige Amitha Kanthi,

Respondent-Respondent-Appellant-Respondents

Commissioner of Agrarian Services,
Office of the Agrarian Services,
Hambantota.

4th Respondent-Respondent-Respondent

Before: **Justice P. Padman Surasena**

Justice E.A.G.R. Amarasekara

Justice A.L. Shiran Gooneratne

Counsel: Rohan Sahabandu, PC with Chathurika Elvitigala for the **Substituted Complainant-Petitioner-Respondent-Appellants.**

W. Dayaratne, PC with Ranjika Jayawardena for the **1(A), 1(B), 1(C), 2nd and 3rd Respondent-Respondent-Appellant-Respondents** instructed by C. Dayaratne.

Yuresha De Silva, DSG for the **4th Respondent-Respondent-Respondent.**

Argued on: 15/05/2023

Decided on: **03/10/2023**

A.L. Shiran Gooneratne J.

The 1st and 2nd Complainants, presently, 1A and 2A Substituted Complainant-Petitioner-Respondent-Appellants (hereinafter referred to as the Complainant-Appellants) are the landlords of a paddy field known as Helambagahakumbura, in extent 10A, 3R and 4P. Hatharasinghe Arachchige Thomas was the tenant cultivator of 4A, 3R, 4P of the said paddy field and Gimara Dissanayake his wife, (hereinafter referred to as Thomas and Gimara respectively), was the tenant cultivator of the rest of the 6A of paddy land. The said Thomas and Gimara died in December 1992 and early 1993 respectively. After the death of the tenant cultivators, Hatharasinghe Arachchige Ranjith Premalal and Hatharasinghe Arachchige Gnanasiri, the 1st and 2nd Respondent-Respondent-Appellant-Respondents (hereinafter referred to as the 1st and 2nd Respondent-

Respondents), the two sons of the said tenant cultivators, continued to cultivate the said paddy land.

Having claimed that the said children of the tenant cultivators, namely the 1st and 2nd Respondent Respondents are not entitled in law to cultivate the said paddy land in question, the Original Complainant-Appellants by application dated 04/02/1994, complained to the 4th Respondent-Respondent-Respondent, the Assistant Commissioner of Agrarian Services (hereinafter referred to as the Assistant Commissioner) to conduct an inquiry in order to evict them from the said paddy land cultivated by the Respondent-Respondents, in terms of Section 14(1) and (2) of the Agrarian Services Act. It must be noted that the 3rd Respondent-Respondent-Appellant Respondent, the sister of the 1st and 2nd Respondent-Respondents, namely Amitha Kanthi (hereinafter referred to as the 3rd Respondent-Respondent) was not a party Respondent to the application made to the Assistant Commissioner by the original Complainants and they did not recognize her as a tenant cultivator or even as an occupier of the subject matter in their application dated 04/02/1994.

The Complainant-Appellants, in their application to the Assistant Commissioner contended that, the 1st Respondent-Respondent, Ranjith Premalal, presently is a tenant cultivator of a paddy field called Kohombagaha Kumbura in extent of 3A and also the permit holder of a paddy field in extent of 2A, belonging to the Mahaweli Authority and that the 2nd Respondent-Respondent, Gnanasiri, is presently a tenant cultivator of a paddy filed called Kohombagaha Kumbura South, in extent 2 1/2A, and the owner cultivator of a paddy filed belonging to the Mahaweli Authority. However, as per P6 and P7, they have placed evidence only to show that Ranjith Premalal was a tenant cultivator of a paddy field called Kohombagaha Kumbura in extent of 3A for 1994 and Gnanasiri was a tenant cultivator for 2A 2R in extent of Kohombagaha Kumbara for 1993.

Having considered the evidence led at the said inquiry, the Assistant Commissioner, by Order dated 25/11/1997 held that, the Respondent-Respondents were cultivating the

paddy field at the time their parents, Thomas and Gimara were cultivating the paddy land and also after their death, and therefore have established a connection with the Complainant-Appellants as landlord and tenant cultivators.

Being aggrieved by the said order, the Complainant- Appellants by Petition of Appeal dated 27/03/1998, appealed to the Provincial High Court holden in Hambantota, seeking a writ of *certiorari* to quash the said Order made by the Assistant Commissioner and a writ of *mandamus* to obtain possession of the said land. The Provincial High Court having considered the question of devolution of rights of a tenant cultivator, in terms of Section 4(1), 8(1) and 14(1) of the Agrarian Services Act (referred to as the said Act), by Order dated 27/10/1999, held that, only the 1st Respondent-Respondent was entitled to succeed to the tenancy in terms of Section 4(1) of the said Act, and that too, should be limited to in extent 5A. Accordingly, the Court issued a writ of *certiorari* to quash the Order of the Commissioner dated 25/11/1997 and a writ of *mandamus* to evict the rest of the Respondent-Respondents from the balance portion of the land in terms of Section 14(2) of the said Act.

Being aggrieved by the said Order, the Respondent-Respondents, by Petition of Appeal dated 09/12/1999, appealed to the Court of Appeal ("the Appellate Court"). The Appellate Court, *inter alia*, having taken into consideration documents marked 'V5' and 'V6', where it was found that the Complainant-Appellants had accepted the rentals from the Respondent-Respondents as tenant cultivators, held that, the Assistant Commissioner, by Order dated 25/11/1997, has correctly decided the issue before him, and that the learned High Court Judge's order to issue a writ of *certiorari* and *mandamus* on the basis that there was an error on the face of the record is erroneous. Accordingly, the Appellate Court, by Order dated 24/02/2012, set aside the Order of the learned High Court Judge dated 21/10/1999 and allowed the Appeal.

The Complainant-Appellants, by its Petition dated 02/04/2012, is before this Court to set aside the said Order dated 24/02/2012, delivered by the Appellate Court.

By Order dated 30/04/2015, this Court granted leave to appeal on the following questions of law.

1. Could the 1st to 3rd Respondents succeed to the tenancy rights of Thomas and Gimara in terms of the provisions in Section 8(1) of the Agrarian Services Act.
2. Is the Judgment of the Court of Appeal contrary to Section 14(1) and (2) of the Agrarian Services Act read together with Section 4 of the same Act.
3. Is there an illegality in the Judgment of the High Court for the Court of Appeal to set aside the same.
4. In the circumstances pleaded, is the Order of the Court of Appeal in terms of law.

In this action, the Complainant-Petitioners made an Application to the Assistant Commissioner under Section 14(1) and (2) of the Act, stating that;

a. they are the owners of a paddy field known as Helambagahakumbura, in extent 10A, 3R and 4P.
b. Thomas and Gimara, were their tenant cultivators, who died in 1992 and early part of 1993 respectively.
c. having no rights to cultivate the said paddy field, the 1st and 2nd Respondent-Respondents, Ranjith Premalal and Gnanasiri, the two sons of the tenant cultivators, continued to cultivate the said paddy field.
d. the said 1st and 2nd Respondent-Respondents are presently cultivating Kohombagaha Kumbura as tenant cultivators and paddy fields belonging to the Mahaweli Authority as a permit holder and as an owner cultivator respectively.
e. to hold an inquiry in terms of Section 14(1) and (2) of the Act, to evict the said Respondent-Respondents from the said paddy field.

In terms of Section 14 of the Act, where a tenant cultivator of any extent of land dies, no person who is not entitled under the said Act, to the rights of such tenant cultivator in respect of such extent, shall occupy and use such extent.

Therefore, as observed earlier, the Complainant-Appellants came before the Assistant Commissioner on the premise that the Respondent-Respondents had no rights under the said Act to cultivate the said paddy field after the death of previous tenant cultivators and sought an order of eviction of the Respondent-Respondents. Therefore, it is pertinent to note that the scope of the Application made by the Complainant-Petitioners before the Assistant Commissioner was to seek an order to evict the Respondent-Respondents from the paddy land in terms of Section 14(2), on the basis that the said persons were not entitled to any tenancy rights of the deceased tenant cultivators.

At the said Inquiry, witness Hewagamage Piyadasa, in cross examination stated that, the Respondent-Respondents cultivated the paddy filed jointly, as representatives of the tenant cultivators. This position was corroborated by the second witness called on behalf of the Complainant-Appellants. The said witnesses appear to be the present Substituted-Complainant-Appellants. All other witnesses stated that they cultivated separated/ different parts within the 10+ Acres.

The Original Complainants appear to have not given evidence before the Assistant Commissioner and as mentioned above, the present Substituted-Complainant-Appellants appear to be the witnesses for the Original Complainant-Appellants before the Assistant Commissioner and the said witnesses have denied that the 1st, 2nd and 3rd Respondent-Respondents were tenant cultivators of the subject matter. Since a relationship of that nature is an arrangement between the Landlord and the tenant cultivator, whether the Substituted Complainant-Appellants as witnesses at that time had any first-hand knowledge to deny that relationship is questionable. Anyhow, while giving evidence on behalf of the Original Complainants, willingness to give 5 acres to the 1st Respondent-Respondent for cultivation has been clearly stated even though the Original Complainants in their application had stated that the Respondent-Respondents have no right to the subject matter.

However, in the contrary, 1st, 2nd and 3rd Respondent-Respondents have given evidence to show that the 1st Respondent-Respondent worked in a separate portion as a tenant

cultivator even when their parents were living. The 3rd Respondent cultivated the portion worked by her father, Thomas, and the 2nd Respondent cultivated the portion worked by his mother, Gimara. A Grama Niladari by the name K.M. Nandasena has given evidence to show that the Respondent-Respondents were cultivating the paddy field in question, but he came to know the subject matter only since 1996. However, a tenant cultivator of a nearby paddy field by the name Lionel Liyana Patabendi has given evidence in favour of the Respondent-Respondents stand that they were cultivating even when their parents were among the living.

Having taken into consideration the evidence led before the inquiry, the Assistant Commissioner by Order dated 25/11/1997 stated, that the Respondent-Respondents had cultivated the said paddy field in the life time of the tenant cultivators, Thomas and Gimara, and after their death, continued to work as tenant cultivators thus, creating a landlord tenant relationship. In arriving at this decision, the Assistant Commissioner has taken into consideration, the evidence given by the respective witnesses and the documents marked 'P13' and 'P14', (the two letters written to the 1st Respondent-Respondent relating to nonpayment of rent), and documents marked as 'V5' and 'V6', which established paying of due rent by the Respondent-Respondents and the collection of such proceeds by the landlord, while accepting the Respondent-Respondents as tenant cultivators. The Assistant Commissioner further held that there is no material evidence to show that Ranjith Premalal or Gnanasiri had cultivated any other land in their capacity as tenant cultivator.

It was the submission of the learned Presidents Counsel appearing for the Respondent-Respondents that the Provincial High Court in its Judgment dated 27/10/1999, did not appreciate the significance of documents marked 'V5' and 'V6', and also failed to examine the Application before the Assistant Commissioner in the context of a Complaint filed under Section 14(1) and (2) of the Act, instead, considered Section 8(1) read with Section 4(1) of the Act, and decided that only the 1st Respondent-Respondent,

if at all, will be entitled to succeed to the tenancy, and limited the extent of the tenancy to 5 acres.

In arriving at the said conclusion, the High Court declared that, since Thomas died without a nomination, the land cultivated by him devolved on the surviving spouse Gimara and hence she became the tenant cultivator of the entire paddy filed in extent 10 acres. After the death of Gimara her rights devolved on the 1st Respondent being the eldest child of Thomas and Gimara, and in terms of Section 4(1) of the Act, the Court held, *"since the maximum extent of paddy land that could be cultivated by a tenant cultivator shall be five acres"* the 1st Respondent was the only tenant cultivator to succeed to the tenancy.

The learned High Court Judge was of the view that *"there is an error on the Order made on 25/11/1997"* and by its Judgment dated 27/10/1999, set aside the Order of the Assistant Commissioner dated 25/11/1997 and accordingly, issued a writ in the nature of *certiorari* to quash the order of the Commissioner, a writ of *mandamus* to comply with Section 14, and to evict the Respondent-Respondents from the land, leaving 5 acres for the 1st Respondent.

At this juncture it is pertinent to observe that Section 14(2) contemplates the eviction of occupants who are not entitled under the Act to the rights of the deceased tenant cultivator from the extent referred to in Section 14(1) which means the total extent occupied by the deceased tenant cultivator and not from certain parts of it. On the other hand, Section 4 and its subsections contemplate a different situation where a tenant cultivator, who generally has a right to occupy, cultivate in excess of the prescribed limit by law. Further Section 4 provides for the tenant cultivator's entitlement with the approval of the Commissioner to select the extent he is entitled in law to cultivate and vacate the rest and failing to exercise such entitlement, eviction of the tenant cultivator from the extent which is in excess of the prescribed limit. The said section also gives the landlord a right to cultivate the extent vacated by the tenant cultivator or to appoint one or more tenant cultivators to the extent so vacated by the tenant cultivator.

Thus, Section 14 applies to a situation where the paddy field is occupied by a person who does not have a right to occupy after the death of the tenant cultivator and Section 4 applies to a situation where a tenant cultivator cultivates more than the prescribed limit. The application before the Assistant Commissioner was based on the premise that the Respondent-Respondents had no right to the subject matter.

Even one considers that having the maximum limit in another paddy field under some other landlord is sufficient to apply Section 4 without making the other landlord a party, still the tenant cultivator may have an option to select his extent to cultivate. It appears that the learned High Court Judge failed to appreciate above differences between the situations and circumstances contemplated by said sections.

The learned High Court Judge also failed to appreciate that;

- Even though that Section 8 has some relevance in deciding who is entitled to occupy as possible successors to the deceased tenant cultivators, that the original application was not made to decide the successor or successors to the deceased tenant cultivator.
- As per the proviso to Section 4(1), even the extent cultivated by the spouse too is considered in deciding the ceiling prescribed by law and as such, if there was a cultivation exceeding the 5A limit, it was there from the commencement of tenancy by the parents of the Respondent-Respondents indicating that cultivation of the excess extent by children of the deceased tenant cultivators and acceptance of rent during the life time of the deceased tenant cultivators even for that excess extent and the evidence to say that 1st Respondent-Respondent cultivated a separate portion, favour the view that landlord and tenant cultivator relationship with 1st Respondent-Respondent commenced prior to the death of Respondent-Respondents' parents.
- Even if the payment of rent during the life time of the parents of the Respondent-Respondents were considered as payment of rent as agents of the deceased tenant

cultivators, in the above backdrop, accepting of rent from the Respondent Respondents naming them as tenant cultivators by 'V5' and 'V6' supports the view that there was a new relationship of landlord and tenant cultivators between the Original Complainant and the Respondent-Respondents and as such, the landlord cannot use Section 14 to evict his own tenant cultivators. Thus, the allegations contained in the application before the Assistant Commissioner was false/ misconceived.

In its Judgment dated 24/02/2012, the Appellate Court having considered documents marked 'V5' and 'V6' led in evidence before the Assistant Commissioner, held that;

"The above documents clearly demonstrate the falsity of the Complaint of Amarasena and Karunawathie. The said document further demonstrates the fact that Amarasena and Karunawathie had accepted Ranjith Premalal and Gnanasiri as their tenant cultivators."

The Appellate Court approached the Application filed before the Assistant Commissioner, as one, in terms of Section 14(1) and (2) of the Agrarian Services Act. In that context, the Court decided that there was no truth in the Complaint and that the Respondent-Respondents were the tenant cultivators of the paddy land in question. Furthermore, the said findings clearly identified the scope of the Complaint before the Assistant-Commissioner, as formed in terms of Section 14 of the Act. Thus, the Court of Appeal has correctly recognized the application made to the Assistant Commissioner as a false application made under Section 14 to evict the tenant cultivators.

Accordingly, I answer the questions of law on which leave to appeal has been granted to the Complainant-Appellant, (and which has been quoted earlier), as follows –

1. Since it was found that the Respondent-Respondents are tenant cultivators who have their own right to occupy, Section 8(1) of the Act, has no application to the instant Appeal and accordingly, is answered in the negative.

2. The Assistant Commissioner has a duty to decide the correctness of the application. The Court of Appeal correctly found the application was based on a wrong premise and the Respondent-Respondents are Tenant Cultivators on their own as found by the Assistant Commissioner. Thus, this question of law does not arise as correctly found by the Court of Appeal, the application before the Commissioner was based on false footing.
3. Answered in the affirmative as the learned High Court Judge failed in appreciating relevant aspects as explained above.
4. Answered in the affirmative.

For these reasons, this Appeal is dismissed; the Judgment of the Appellate Court is affirmed; and that of the Provincial High Court is set aside. No order for costs.

Judge of the Supreme Court

P. Padman Surasena, J

I agree

Judge of the Supreme Court

E.A.G.R. Amarasekara, J

I agree

Judge of the Supreme Court