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

In the matter of an Appeal from the order of the Court of Appeal dated 06th October 2016 made in Writ Application No. 317/16 in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ravindra Kahanda Kumara Weragama,
Welgala Estate, Weragama,
Kaikawela, Matale.

Petitioner

S.C. Appeal No. 55/2017
S.C. (Spl) L.A. Application No. 231/2016
C.A. Writ Application No. 317/2016 **Vs.**

M.A.S. Weerasinghe,
Commissioner General of Agrarian Development,
Department of Agrarian Development,
No. 42, Sir Marcus Fernando Mawatha,
Colombo 07.

Respondent

AND NOW BETWEEN

Ravindra Kahanda Kumara Weragama,
Welgala Estate, Weragama,
Kaikawela, Matale.

Petitioner-Appellant

Vs.

M.A.S. Weerasinghe,
Commissioner General of Agrarian Development,
Department of Agrarian Development,
No. 42, Sir Marcus Fernando Mawatha,
Colombo 07.

Respondent-Respondent

Before: B.P. Aluwihare, P.C., J.
Yasantha Kodagoda, P.C., J.
Janak De Silva, J.

Counsel: Dulindra Weerasuriya P.C. with Pasan Malinda for the Petitioner-Appellant
Rajitha Perera SSC for the Respondent-Respondent

Written Submissions filed on:
Petitioner-Appellant on 01.06.2017 and 18.08.2021
Respondent-Respondent on 31.05.2017 and 04.08.2021

Argued on: 07.07.2021

Decided on: 07.12.2021

Janak De Silva, J.

The Petitioner-Appellant (hereinafter referred to as "Appellant") owns four parts of land containing in total R. 1 P. 9.56. By letter dated 04.01.2016 (P4), he asked the Assistant Commissioner of Agrarian Services of Matale to declare these highlands. Permission was also sought to grow trees on the earth.

The Respondent-Respondent (hereinafter referred to as "Respondent") in a letter dated 24.03.2016 (P11) stated that the said lands are not paddy land. He claimed to do so under section 28 of the Agrarian Development Act No. 46 of 2000 as amended (hereinafter referred to as “Act”). In that letter, he sought to impose four conditions that must be met in order for the land to be used for non-agricultural purposes, namely:

කොන්දේසි

01. ඉඩමේ කරනු ලබන සංවර්ධන කටයුතු වලදී රටේ පවත්නා නීතිරීති වලට අනුව අදාල පලාත් පාලන ආයතනය හා අදාල අනෙකුත් ආයතනයන්ගේ අනුමැතිය ඔබ විසින් ලබා ගත යුතු අතර එකී ආයතන විසින් පනවනු ලබන කොන්දේසි වලට අනුව කටයුතු කළ යුතුය.

02. මෙම ඉඩමෙහි කිසිදු ආකාරයක පස් පිරවීමක්/ ගොඩකිරීමක් සිදු නොකළ යුතුය.

03. මෙම ඉඩම වෙන්දේසි කිරීම සඳහා කට්ටි කිරීමක් සිදු නොකළ යුතුය. (දරුවන් අතර දේපල බෙදා දීමේදී මෙය අදාල නොවේ)

04. යාබද වගා කරන කුඹුරු ඉඩම් පවතී නම් එකී කුඹුරු ඉඩම් වල වගා කටයුතු වලට හා ජලාපවහන පද්ධති වලට බාධාවක් නොවන අයුරින් කටයුතු කළ යුතුය.

05. කුඹුරු ඉඩමක් නොවන බවට ලබාදෙන මෙම සහතිකය ඉඩමේ භුක්තිය හා අයිතිය සම්බන්ධයෙන් පැන නගින ගැටළු වලදී සාක්ෂියක් ලෙස අදාල කරගත නොහැක.

The Appellant sought a writ of certiorari to quash those conditions. It was argued that the Respondent lacked the power to impose such conditions on the use of non-agricultural land.

The Court of Appeal refused notice and held that the Act provided the Respondent to protect both paddy and agricultural land. The Court concluded that the Respondent had the authority to impose terms and conditions on non-agricultural land use.

This Court has granted special leave to appeal on the following question:

> "Has the Commissioner General of Agrarian Development (Respondent-Respondent) the legal authority to impose conditions when he declares a land not to be a paddy land under section 28(1) of the Agrarian Development Act No. 46 of 2000?"

The long title of the Act states, among other things, that it is to provide for the utilisation of agricultural lands in accordance with agricultural policies. It is part of the Act and, as such, is considered an aid to construction. Moreover, the preamble to the Act elucidates that it has become necessary to set out the restrictions to be imposed on persons using agricultural land for non-agricultural purposes in order to ensure maximum utilization of agricultural land for agricultural production. In *Union of India v. Elphinstone Springg and Weaving Co Ltd & Ors* [AIR (2001) Supreme Court 724] the Supreme Court of India held that a long title along with the preamble is a good guide regarding the object, scope or purpose of the Act.

Hence, there can be no doubt that part of the object, scope or purpose of the Act is to provide for the utilization of agricultural lands in accordance with agricultural policies. That goal is pursued by restricting the use of agricultural land for non-agricultural purposes.

Part II of the Act is titled "*utilising agricultural lands in accordance with agricultural policies*". Section 22(1) of the Act plays a pivotal role in the implementation of this object, scope or purpose by imposing a duty on every owner cultivator or occupier of any agricultural land who desires to cultivate or manage such land to do so in accordance with standards of cultivation provided in the Act or any regulation made thereunder. Section 22(2) of the Act provides for the promulgation of regulations prescribing the crops to be cultivated, the livestock to be reared, the fish to be bred according to the situation and natural resources of the land, and generally for the efficient management of agricultural land and for better cultivation.

Accordingly, any restrictions on the cultivation or management of agricultural lands are sought to be done by the Act by standards of cultivation provided in the Act or regulations made thereunder.

The issue to be considered is whether the Act has additionally vested power in the Commissioner-General of Agrarian Development to impose other conditions on owner cultivators or occupier of any agricultural land as to its use. The Court of Appeal concluded that he had this authority under sections 28 and 29 of the Act.

When interpreting empowering instruments, what is not permitted should be considered prohibited [*Ashbury Railway Carriage and Iron Co. ltd. v. Hector Riche* (1875) L.R. 653)]. It is the strict doctrine of ultra vires which was the subject of some refinement later so that it could be applied in a reasonable manner. Hence whatever may be regarded as incidental to, or consequential upon, those things which the Legislature has authorized ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires [*Attorney-General v. The Great Eastern Railway Co.* (1880) 5 A.C. 473].

Upon a careful examination of sections 28 and 29 of the Act, it is clear that they deal with determining whether a land is a paddy land and the identification of paddy lands which can be cultivated with paddy and other crops.

In this context, it is necessary to remember that, by definition, rice growing is included in the meaning of "agriculture" in the Act. Upon a further examination of section 100 of the Act, it is clear that although all “paddy land” falls within the meaning of “agricultural land”, all “agricultural land” does not fall within the meaning of “paddy land”.

Accordingly, I hold that sections 28 and 29 of the Act does not empower the Commissioner-General of Agrarian Development to impose conditions on owner cultivators or occupier of any agricultural land as to its use.

Admittedly, section 31(1) of the Act empowers the Commissioner-General of Agrarian Development or an officer appointed under section 38(2) of the Act to enter upon any extent of agricultural land to inspect and make inquiries. However, subsection 31(2) of the Act limits the scope of this inspection and investigation for the purpose of determining the matters specified in it. None of these matters pertain to the conditions imposed by the Commissioner General for Agrarian Development on agricultural land use.

On the contrary, section 31(3) of the Act empowers such officers to examine any permission issued under section 32(1) or 33(1) of the Act in order to ascertain whether the terms and conditions subject to which permission has been issued are being complied with. These provisions deal with the use of paddy land for purposes other than agricultural cultivation without the permission of the Commissioner-General of Agrarian Development and filling up of paddy land or utilizing paddy land for any purpose other than cultivation.

Accordingly, I hold that the provisions in Part II the Act only makes provision for terms and conditions to be imposed by the Commissioner-General of Agrarian Development on the use of paddy lands. They do not expressly or implicitly allow him to impose terms and conditions on agricultural land use.

The learned President's Counsel drew our attention to a judgment of the Court of Appeal in *Ranatunge v. Commissioner General of Agrarian Development and Another* [C.A. (Writ) 180/2017; 17.07.2019] where I held that the Commissioner-General of Agrarian Development is not empowered to impose any conditions pursuant to section 28 of the Act after he decided that the land is not a paddy land. I see no reason to change my conclusions therein.

Nonetheless, I am mindful of the decision in *Peiris v. The Commissioner of Inland Revenue* (65 N.L.R. 457) where Sansoni J. held that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power.

Therefore, though the Commissioner-General of Agrarian Development has purported to act in terms of Section 28 of the Act in imposing the conditions set out in letter dated 24.03.2016 (P11), the whole Act must be examined to ascertain the true limits of the powers of the Commissioner-General of Agrarian Development on imposing terms and conditions on the use of the agricultural land.

In this respect, I note that section 83 of the Act gives the Commissioner General for Agrarian Development the power to make certain orders. Such orders may take the form of requiring remedial measures where, amongst other matters, any irrigation channel, watercourse, bund, bank, reservation tank, dam, tank reach or irrigation reserve is blocked up, obstructed or encroached upon, damaged or caused to be damaged. This power is granted to ensure that the cultivation of paddy lands is done in accordance with the provisions of the Act. Limiting this power to remedial measures following damage runs counter to the purpose or objective of the Act. Accordingly, I hold that the Commissioner-General of Agrarian Development has incidental or consequential power in terms of section 83 of the Act to take preventive measures to stop any of the acts specified therein from occurring. It includes the power to restrict agricultural land use to prevent any of the acts specified in section 83 of the Act from occurring.

Accordingly, I answer the question of law in the negative. However, under section 83 of the Act, the Commissioner-General of Agrarian Development has the incidental or consequential power to take preventive measures to prevent any act specified therein from occurring. It includes the power to restrict agricultural land use to prevent any act specified therein from occurring.

I will now examine the conditions imposed by the Respondent by letter dated 24.03.2016 (P11) and its vires in that legal context. Condition 1 seems to be a repeat of the applicable laws. However, nothing in the Act indicates that the Respondent has powers to monitor the implementation of these laws. Therefore, condition 1 is ultra vires his powers.

Conditions 2 and 3 are restrictions on the agricultural land use. These are not restrictions imposed in terms of standards of cultivation provided in the Act or regulations made thereunder. Neither are they aimed at preventing any of the acts specified in section 83 of the Act. Accordingly, conditions 2 and 3 are ultra vires the powers of the Commissioner-General of Agrarian Development.

Condition 4 is intended at preventing any obstruction to paddy cultivation and watercourse. The Commissioner General for Agrarian Development has the incidental or consequential power under section 83 of the Act to take such preventive measures. Therefore condition 4 is intra vires his powers.

The certificate issued pursuant to section 28 of the Act determines whether the lands are paddy lands. It does not entail any examination of possession or title. Accordingly, condition 5 is intra vires the power of the Commissioner-General of Agrarian Development.

For the reasons set out above, I conclude that conditions 1, 2 and 3 imposed by the Respondent in a letter dated 24.03.2016 (P11) are ultra vires. None of the other determinations or conditions are ultra vires.

The Appellant sought a writ of certiorari to quash the decision to impose five conditions set out in P11. As explained earlier, only conditions 1, 2 and 3 exceed the Respondent's authority.

In *Thames Water Authority v. Elmbridge Borough Council* [(1983) 1 Q.B. 570] it was held that where a local authority had acted in excess of their powers, the court is entitled to look not only at the document but at the factual situation and, where the excess of the power was easily identifiable from the valid exercise of power, to give effect to the document in so far as the exercise of the power had been intra vires. Similar approach was adopted in *Regina v. Secretary of State for Transport ex parte Greater London Council* [(1985) 3 W.L.R. 574] when it was held that in an appropriate case, certiorari will go to quash an unlawful part of an administrative decision having effect in public law while leaving the remainder valid.

Such severance of any ultra vires part of a decision is also circumscribed. In *Agricultural, Horticultural and Forestry Industry Training Board v. Ayelsbury Mushrooms Ltd.* [(1972) 1 W.L.R. 190] court held that where the bad can be cleanly severed from the good, the court will quash the bad part only and leave the good part standing. In *R. v. North Hertfordshire District Council ex parte Cobbold* [(1985) 3 AII.E.R. 486] court held that where a specific part of a licence could be identified as being offensive and therefore unlawful, it could only be severed from the licence so far as to leave the remainder untainted if the severance would not alter the essential character or substance of that which remained. It follows that severance would not be permitted where the words which is sought to sever were fundamental to the purpose of the whole licence.

I hold that conditions 1, 2 and 3 of letter dated 24.03.2016 (P11) can be cleanly severed from the other valid parts of the document without altering the essential character or substance of the remainder.

For the reasons set out above, I set aside the judgment of the Court of Appeal dated 06.10.2016 and issue a writ of certiorari quashing the conditions 1, 2 and 3 of letter dated 24.03.2016 (P11).

I make no order as to costs.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT