

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

In the matter of an appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

L. G. J. De Silva

SC Appeal No. 171/2010

Court of Appeal Case No.

CA (PHC) 100/1998

High Court Case No.

HCA (Hambantota) 26/1996

(Agrarian Services Centre Bandagiriya

Inquiry No. 42/ 3417/94)

-Vs-

Paranahencharige Siridiyas

Helambagaswela,

Tissamaharama.

1ST RESPONDENT

Assistant Commissioner of Agrarian Services

Agrarian Services Office,

Hambantota.

2ND RESPONDENT

AND THEN BETWEEN

Paranahencharige Siridiyas

Helambagaswela,

Tissamaharama.

1ST RESPONDENT-APPELLANT

-Vs-

L. G. J. De Silva

No. 15,

Beach Road,

Matara.

PETITIONER-1ST RESPONDENT

Assistant Commissioner of Agrarian Services
Agrarian Services Office,
Hambantota.

2ND RESPONDENT-RESPONDENT-
RESPONDENT

AND NOW BETWEEN

L. G. J. De Silva (**Deceased**)
No. 15,
Beach Road,
Matara.

PETITIONER-1ST RESPONDENT-
APPELLANT

Loku Galappattige Somachandra de Silva
No. 103/7,
Abeysekera Road (Off Watarappala Road),
Mt. Lavinia.

SUBSTITUTED PETITIONER-1ST
RESPONDENT-APPELLANT

-Vs-

1. Paranahencharige Siridiyas (Deceased)
Helambagaswela,
Tissamaharama.

1ST RESPONDENT-APPELLANT-
RESPONDENT

1A. Paranamanage Sisira
No. 294/6,
Seva Piyasa Road,
Helambagaswela,
Tissamaharama.

1A RESPONDENT-APPELLANT-
RESPONDENT

Assistant Commissioner of Agrarian Services
Agrarian Services Office,
Hambantota.

2ND RESPONDENT-RESPONDENT-
RESPONDENT

BEFORE : **P. PADMAN SURASENA, J**
JANAK DE SILVA, J
ARJUNA OBEYESEKERE, J.

COUNSEL : Geoffrey Alagaratnam, PC with Mr. Suren Fernando for the Substituted Petitioner-1st Respondent-Appellant.
W. Dayaratne, PC with Ms. Ranjika Jayawardena for the 1A Respondent-Appellant-Respondent.

ARGUED ON : 27-08-2024

DECIDED ON : 14-03-2025

P. PADMAN SURASENA, J.

The Petitioner-1st Respondent-Appellant (hereinafter referred to as the Landlord) is the owner of the paddy land called "Goda Kumbura A" which is situated within Yodha Kandiya Agrarian Services Division in Tissamaharama. The 1st Respondent-Appellant-Respondent (hereinafter referred to as the Tenant Cultivator) is the Tenant Cultivator of the aforesaid paddy land.

The Landlord made a complaint to the 2nd Respondent-Respondent-Respondent who is the Assistant Commissioner of Agrarian Services Hambantota (hereinafter referred to as the Assistant Commissioner of Agrarian Services) alleging that the Tenant Cultivator was in arrears of payment of rent due to him as the landlord. Accordingly, after the due inquiry, the Assistant Commissioner

of Agrarian Services by his letter dated 22-12-1994 (marked **A5**), directed the Tenant Cultivator to pay the arrears of rent amounting to Rs. 16,800/= to the Landlord in three installments within a specified time. The scheme of payment set out in the said direction made by the Assistant Commissioner of Agrarian Services as per **A5** is as follows :

- (a) *1st installment in a sum of Rs. 8000/= should be paid on or before 31-01-1995,*
- (b) *2nd installment in a sum of Rs. 8000/= should be paid on or before 30-04-1995,*
- (c) *3rd installment in a sum of Rs. 800/= should be paid on or before 30-10-1995.*

In the said Order, the Assistant Commissioner of Agrarian Services has also informed the Tenant Cultivator that in the event of his failure to pay the rent as directed, his tenancy rights to the paddy field would be forfeited.

Thereafter, the Tenant Cultivator has duly paid the 1st installment within the time specified in the direction **A5**. With regard to the payment of the 2nd installment of Rs. 8000/=, the Tenant Cultivator has posted two money orders obtained from the Post Office of Tissamaharama to the Landlord who is residing in Matara. These two money orders are marked in this proceeding as **A7**. The brief letter written by the Tenant Cultivator to inform the Landlord that he is sending the two money orders has also been produced in this proceeding marked **A6**. One of the money orders is for Rs. 5000/= and the other is for Rs. 3000/=. Parties do not dispute the fact that these money orders have been issued by Tissamaharama Post Office on 29-04-1995, which is a date before the deadline i.e., 30-04-1995, set out in the afore-said direction made by the Assistant Commissioner of Agrarian Services as per **A5** as to the payment of the 2nd installment.

Thereafter, the Landlord, having received these two money orders by post on 02-05-1995, has returned them to the Tenant Cultivator with his letter marked in this proceeding as **A6**. The letter **A6** is dated 04-08-1995, which is after more than three months from the due date i.e., 30-04-1995.

The Landlord, having returned the money orders with his letter dated 04-08-1995, had thereafter proceeded to complain to the Assistant Commissioner of Agrarian Services by his letter dated 24-11-1995 (marked in this proceeding as **A8**) that the Tenant Cultivator had failed to pay the 2nd installment before the due date i.e., 30-04-1995. The Landlord by the said letter has moved the

Assistant Commissioner of Agrarian Services to make order terminating the tenancy rights of the Tenant Cultivator in terms of Section 18(1) of the Agrarian Services Act No. 04 of 1991. Upon the receipt of the letter A8 and also several other letters from the Tenant Cultivator to the same effect making the same request (these requests have been produced in this proceeding: the letter dated 02-04-1996 marked A9; the letter dated 20-07-1995 marked A10), the Assistant Commissioner of Agrarian Services having considered those requests made by the Landlord, has communicated his decision to the Landlord by the letter dated 07-05-1996 produced in this proceeding marked A11. The Assistant Commissioner of Agrarian Services by A11 has decided to refuse to make a direction as requested by the Landlord in his letters marked A8 and A9.

Being aggrieved by the decision of the Assistant Commissioner of Agrarian services, the Landlord filed a Petition in the Provincial High Court of Southern Province holden at Hambantota (hereinafter referred to as the Provincial High Court) praying inter alia firstly for a Writ of Certiorari to quash the decision marked in the Provincial High Court as @@8 and secondly for a Writ of Mandamus on the Assistant Commissioner of Agrarian Services to compel him to make a direction to terminate the tenancy rights of the Tenant Cultivator.

I observe however that the document produced marked @@8 in the Provincial High Court was the Request dated 24-11-1995 made by the Landlord which had urged the Agrarian Services Commissioner to terminate the tenancy rights of the Tenant Cultivator on the basis that the Tenant Cultivator has defaulted the payment of arrears as per the direction previously made. I therefore observe that the Petition filed by the Landlord in the Provincial High Court is misconceived in law. Despite the afore-mentioned threshold issue against entertaining the Writ Petition filed in the Provincial High Court, the learned Judge of the Provincial High Court by his judgment dated 07-05-1998, has issued the Writ of Certiorari to quash the decision of the Assistant Commissioner of Agrarian Services set out in the letter dated 07-05-1996 produced in the High Court as @@12.¹ The learned Judge of the Provincial High Court had chosen not to act on the submission made by the learned Counsel who appeared for the Tenant Cultivator in the Provincial High Court, despite his complaint against inclusion of the wrong prayer in the Writ Petition filed before the Provincial High Court.

¹ Marked in these proceedings as A11.

The learned Judge of the Provincial High Court in the same judgment has also directed that the tenancy rights of the Tenant Cultivator must stand terminated in terms of section 18(2) of the Agrarian Services Act. The learned Judge of the Provincial High Court in his judgment had further directed the Tenant Cultivator to handover the possession of the paddy land to the Landlord.

Being aggrieved by the judgment dated 07-05-1998 of the Provincial High Court, the Tenant Cultivator has preferred an appeal to the Court of Appeal. This was to canvas the said judgment of the Provincial High Court. The Court of Appeal after the conclusion of the argument of the case, by its judgment dated 02-09-2010, has decided to set aside the judgment dated 07-05-1998 of the Provincial High Court allowing the Appeal of the Tenant cultivator. The Court of Appeal in the said judgment has taken the view that the fact that the Tenant Cultivator has handed over the letter with two money orders to Tissamaharama Post Office on 29-04-1995 should be considered as the payment of that installment which was due to be paid before 30-04-1995.

The Court of Appeal has not agreed with the conclusion of the Provincial High Court that the Landlord has not received the payment of arrears before 30-04-1995. The Court of Appeal has given due consideration to the fact that the Tenant Cultivator has handed over the letter with the money orders to Tissamaharama Post Office on 29-04-1995.

Being aggrieved by the judgment dated 02-09-2010 of the Court of Appeal, the Landlord has filed the Leave to Appeal Petition pertaining to this Appeal. Upon the said Leave to Appeal Petition being supported, this Court by its order dated 07-12-2010 has granted Special Leave to Appeal on the following two questions of Law:

(b) Did their Lordships of the Court of Appeal err in law in failing to recognize that the 1st Respondent had not made payment to the Petitioner on or before 30-04-1995 as required?

(c) Did their Lordships of the Court of Appeal err in law in holding that the 1st Respondent was deemed to have made payment before 30th April 1995, by apparently considering tendering of payment to the post office as due payment, specially in circumstances where the Petitioner or other authorized persons had not expressly or impliedly nominated post office to be the Petitioner's agent for receipt

of payment?

Section 18 of the Agrarian Services Act is as follows:

- (1) *Where the landlord informs the Commissioner that the tenant cultivator is in arrears of rent in respect of an extent of paddy land, the Commissioner shall cause an inquiry to be held by an Inquiry Officer and where the Inquiry Officer holds that the rent is in arrears and communicates his decision to the Commissioner, the Commissioner shall give notice in writing to the tenant cultivator that his tenancy in respect of such extent would be terminated if he fails to pay such arrears within the time specified in such notice.*
- (2) *A tenant cultivator who fails to pay the arrears of rent within the time specified therefor shall be deemed to have forfeited his tenancy and shall vacate such extent on being ordered to do so by the Commissioner.*

Therefore, the first issue I must decide in this case is whether the Tenant Cultivator has paid the second installment of the arrears rent as per the direction by the Assistant Commissioner of Agrarian Services.

First and foremost one has to be mindful of the purpose as to why the Parliament has promulgated this Provision. The mischief the Parliament was aiming to suppress by promulgating Section 18 was to ensure that the tenant cultivators make the payment of rent to their landlords before the due date.

In the instant case, the amount of money payable as rent (Rs. 8000/=) which was to be paid to the Landlord, had gone out of the Tenant Cultivator's pocket on 29-04-1994. Thus, for all purposes, the Tenant Cultivator had not been on a course to default the payment of arrears of rent by the due date. It is the position of the Tenant Cultivator that he was compelled to adopt this course due to the continued refusal by the Landlord to accept the cash payments attempted by him previously. Having regard to the following facts namely: the long distance between Tissamaharama (Where the Tenant Cultivator resides) and Matara (Where the Landlord resides); the transport difficulties which would have prevailed during this era (in 1994); the fact that the Tenant Cultivator should have spent an additional amount of money to obtain the money orders

(as commission paid to the post office), I am unable to reject the assertion made by the Tenant Cultivator that the Landlord had continued to refuse to accept the cash payment attempted by the Tenant Cultivator previously. The fact that the Landlord has refused to accept the payment previously, is corroborated by his action of returning the two money orders with his letter dated 04-08-1995 (**A6**). Moreover, the motive of the Landlord for continuous refusal of acceptance of payment of arrears made by the Tenant Cultivator is shown clearly from his request dated 24-11-1995 (**A8**) whereby he had moved the Assistant Commissioner of Agrarian Services to terminate the tenancy rights of the Tenant Cultivator on the basis that the Tenant Cultivator had defaulted the payment of arrears of rent.

A Petitioner filing a Writ Petition must come to Court with clean hands. Our Courts have persistently held that the Courts must not grant writs which are discretionary in nature, when there are grounds to believe that such writs have been prayed for, with ulterior motives.

The 'clean hands' doctrine is a maxim in equity which says that the one who comes to Court should come with clean hands with no fault of their own. In the case of K. G. D. Walter Abeysundara vs. Dr. S. H. Munasinghe,² the Court of Appeal dismissed the Petitioner's application as they have come to Courts with 'unclean hands'. The learned Judge of the Court of Appeal in that case further held that:

"By perusing legal literature and the Superior Court judgements, it emanates that, the doctrine of clean hands is also an important limb of the principle of uberrimae fidei."

In the case of Sella Kapu Lilani Abeychandra vs. Principal & Other³ the Court held:

"the Petitioner has misrepresented the facts as to the residence, and in violation of the 'clean hands doctrine' in equity. This court is obliged to protect the integrity of the court and simultaneously, bound to prevent the 'improper acts' being committed in the matter of public policy."

The learned Counsel for the Landlord relied on the case of Wickramanayake vs. Jayasekara.⁴ Based

² C.A.L.R. [2022]

³ S.C.L.R. [2019]

⁴ 2002 (2) Sri L R 261

on this judgment, the learned Counsel for the Landlord sought to argue that the Tenant Cultivator has in reality forfeited his tenancy. However, I would not proceed to consider this judgment at this stage. This is because there is a threshold requirement which the Landlord has to satisfy before he could argue on this line. The Landlord must first establish that the Tenant Cultivator has defaulted the payment in arrears as directed by the Assistant Commissioner of Agrarian Services as the threshold requirement. I have already held that the Tenant Cultivator has made the payment of arrears of rent by 29-04-1994. Therefore, for the purpose of this judgment, I need not proceed either to consider the above judgment or to interpret Section 18 of the Agrarian Services Act.

While there are several modes of payment adopted by people of this country, in the absence of any specified mode of payment agreed upon by the parties for the payment of arrears of rent by the Tenant Cultivator to the Landlord, I am unable to accept the argument advanced by the learned Counsel for the Landlord that the payment of arrears of rent by two money orders should not be accepted as a valid payment mode as the Landlord had not authorized the Postal authorities to accept rent on his behalf. The Post Office which is run by the Department of Posts in my view, could be considered as a sure mode of transferring money, particularly during that period (1994).

In these circumstances and for the foregoing reasons, I answer both the questions of law in respect of which this Court has granted Special Leave to Appeal, in the negative. I proceed to affirm the judgment of the Court of Appeal dated 02-09-2010. This Appeal must therefore stand dismissed with costs.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT.