

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

In the matter of an appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended

SC Appeal No. 79/2021

HC Hambantota Case No. HCA/13/2019

Agrarian Board of Review No.

AGBR/2017/09/20

Agrarian Tribunal Inquiry No.

AT/09/04/2015(3) 2015/03/01

Leelasoma Sudusinghe,
Beligalagoda, Ambalanthota.

COMPLAINANT

- Vs -

Jayanthi Wickrema Wijedeera,
Beligalagoda, Ambalanthota.

RESPONDENT

And between

Leelasoma Sudusinghe,
Beligalagoda, Ambalanthota.

COMPLAINANT – APPELLANT

- Vs –

Jayanthi Wickrema Wijedeera,
Beligalagoda, Ambalanthota.

RESPONDENT – RESPONDENT

And between

Jayanthi Wickrema Wijedeera,
Beligalagoda, Ambalanthota.

RESPONDENT – RESPONDENT – APPELLANT

- Vs -

Leelasoma Sudusinghe,
Beligalagoda, Ambalanthota.

COMPLAINANT – APPELLANT – RESPONDENT

And now between

Leelasoma Sudusinghe,
Beligalagoda, Ambalanthota.

**COMPLAINANT – APPELLANT – RESPONDENT –
APPELLANT**

Hewa Angapullige Ariyawathie,
alias Hewagamage Ariyawathie,
Beligalagoda, Ambalanthota.

**SUBSTITUTED COMPLAINANT – APPELLANT –
RESPONDENT – APPELLANT**

- Vs -

Jayanthi Wickrema Wijedeera,
Beligalagoda, Ambalanthota.

**RESPONDENT – RESPONDENT – APPELLANT –
RESPONDENT**

Before: Arjuna Obeyesekere, J
K. Priyantha Fernando, J
Dr. Sobhitha Rajakaruna, J

Counsel: Asthika Devendra for the Substituted Complainant – Appellant – Respondent – Appellant

Shabeer Huzair for the Respondent – Respondent – Petitioner – Respondent

Argued on: 1st October 2025

Written Submissions: Tendered on behalf of the Substituted Complainant – Appellant – Respondent – Appellant on 29th October 2025

Tendered on behalf of the Respondent – Respondent – Petitioner – Respondent on 14th October 2025

Decided on: 30th April 2026

Obeyesekere, J

(1) This is an appeal arising from the judgment delivered on 30th July 2021 by the Provincial High Court of the Southern Province holden at Hambantota [the High Court]. By the said judgment, the High Court set aside the Order dated 27th August 2019 delivered by the Board of Review established under the Agrarian Development Act, No. 46 of 2000, as amended [**the Act**].

The facts in brief

(2) According to the Complainant – Appellant – Respondent – Appellant [the Appellant], his father, the late Pattisingho Sudusinghe [Sudusinghe] was the tenant cultivator of a paddy land known as ‘Debaragaha Kumbura’ in extent of two acres situated within the district of Hambantota. On 5th November 1982, Sudusinghe lodged a complaint as provided by the Agrarian Services Act, No. 58 of 1979 [**the 1979 Act**] with the Assistant Commissioner of Agrarian Services, Hambantota that he had been the tenant cultivator of the said paddy land since 1966 and that he had been evicted from the said paddy land on 3rd November 1982 by its owner, Don Diyoni Ediriweera Wijesuriya [the owner].

- (3) At the inquiry conducted into the said complaint by an Assistant Commissioner of Agrarian Services, it transpired that even though the name of Sudusinghe had not been registered in the relevant registers, the owner had admitted that Sudusinghe had in fact cultivated the said land until 1982. By his order dated 18th July 1985, the Inquiry Officer had concluded, on a balance of probability, that Sudusinghe was the tenant cultivator and that he must be allowed to re-enter the land and to possess the land as a tenant cultivator.
- (4) Aggrieved, the owner had filed an appeal with the Commissioner General of Agrarian Services who had affirmed the above finding. The owner had thereafter filed an appeal in the Court of Appeal which had directed on 20th October 1995 that the complaint be heard afresh. Copies of the orders made by the Commissioner General of Agrarian Services and the Court of Appeal are not available before this Court. However, the above factual matters and the fact that a fresh inquiry was not held as directed by the Court of Appeal until 2015 are not disputed by the parties.
- (5) I must perhaps state that even though it had been held by the Inquiry Officer that Sudusinghe had been evicted and the said finding had been affirmed by the Commissioner General of Agrarian Services, Sudusinghe was not restored in possession. Thus, Sudusinghe and his son, the present Appellant [who too passed away pending the outcome of this appeal] have not cultivated the said paddy land since Sudusinghe was evicted in 1982.
- (6) The 1979 Act was repealed by Section 99(1) of the Act.

Fresh complaint in 2015

- (7) In terms of Section 7(3) of the Act, where *“a tenant cultivator of any extent of paddy land notifies the Commissioner General in writing that he has been evicted from such extent, the Commissioner General shall refer the matter to the Agrarian Tribunal and direct the Tribunal to hold an inquiry for the purpose of deciding the question whether or not such person has been evicted.”*

- (8) Sudusinghe had accordingly made an application on 18th March 2015 in terms of Section 7(3) that a fresh inquiry be held into his complaint made in 1982 that he was evicted by the owner. Even though in terms of Section 7(4) such an application must be made within six months of the eviction, it is admitted that the said application relates back to the eviction of Sudusinghe in 1982.
- (9) It must be stated that by this time, ownership and possession of the paddy land had changed, with:
- (a) the owner having transferred the said paddy land to Nimal Ediriweera Wijesuriya by Deed No. 865 dated 1st January 1992;
 - (b) Nimal Ediriweera Wijesuriya transferring the property to Nihal Wickrema Wijedasa by Deed No. 523 dated 10th June 2002; and
 - (c) the Respondent – Respondent – Appellant – Respondent [the Respondent] becoming the owner of the said paddy land by Deed No. 15671 dated 6th June 2016.
- (10) An inquiry had thereafter been conducted by the Agrarian Tribunal established in terms of the Act. Sudusinghe had passed away on 22nd January 2016 while the inquiry was proceeding and the Appellant had been substituted in place of Sudusinghe. By its Order delivered on 1st November 2017, the Agrarian Tribunal had concluded that the Owner had evicted Sudusinghe in 1982.
- (11) In order to give context to what the Agrarian Tribunal did thereafter, I must at this stage refer to the provisions of the Agrarian Development (Amendment) Act, No. 46 of 2011, which introduced a new Part numbered as ‘Part 1’ titled ‘Tenant Cultivators of paddy lands’ containing Sections 1A – 1H.
- (12) In terms of Section 1A:
- “A person being a citizen of Sri Lanka shall, from and after the date of the coming into operation of this Act, be deemed to be a tenant cultivator within the meaning and for the purposes of the principal enactment, if, at any time during the period commencing on the eighteenth day of August two thousand and ending on the day immediately preceding the date of the coming into operation of this Act,—*

- (a) *such person had cultivated an extent of paddy land under an agreement, whether written or oral, entered prior to, or on, the eighteenth day of August two thousand;*
- (b) *such person, being in terms of the provisions of section 1D, a successor, of a tenant cultivator who is deceased or is permanently disabled, who had been evicted from the extent of paddy land which had previously been cultivated by such deceased or disabled tenant cultivator.”*

(13) Sudusinghe as well as his son comes within the above definition of a tenant cultivator.

(14) Having held that Sudusinghe had been evicted in 1982, the Agrarian Tribunal had thereafter referred to the provisions of Section 1B(1) of the Amendment Act, which reads as follows:

“(1) Where at any time during the period commencing on the eighteenth day of August two thousand and ending on the day immediately preceding the date of the coming into operation of this Act, the nature of the possession of any extent of paddy land specified in section 1A has changed by reason of any sale, transfer or upon any Order of any Court, no person shall, even though such person is deemed to be the tenant cultivator by virtue of the provisions of section 1A, be placed in possession of any such extent of paddy land or be given possession of any such extent:

Provided however, such tenant cultivator as is referred to above, may make an application in writing, in that behalf to the Commissioner General of Agrarian Services setting out with documentary proof, the reason which prevents him from being placed in or given possession of the extent of paddy land of which he has been deemed to be the tenant cultivator. The Commissioner General shall, after such inquiry as may be required in the circumstances and on consideration of the facts before him and upon summoning such person to make any further explanation as he considers necessary, make order that such person shall therefor be paid compensation in lieu of placing such person in or giving such person possession of the relevant extent of paddy land.”

- (15) Having referred to Section 1B(1), the Agrarian Tribunal held that the Appellant shall be entitled to the payment of compensation in lieu of placing him in possession. I must for the sake of clarity state that the Agrarian Tribunal did not make an order for the payment of compensation but only held that the Appellant shall be entitled to the payment of compensation.
- (16) Section 1B applies in a situation where the tenant cultivator has been evicted from the paddy field that he was cultivating and the circumstances set out therein exist, i.e., a change has taken place in the possession of the paddy land during the period that the tenant cultivator had been evicted. While Section 2(1) requires the owner of a paddy land desirous of selling such paddy land to offer the tenant cultivator the right of first refusal, it appears that Section 2 does not apply in a situation where the sale takes place at a time that the tenant cultivator had been evicted. While I am mindful that such a conclusion can be to the disadvantage of a tenant cultivator and can lead to an abuse of the said provision, I am also of the view that any other interpretation of Section 1B(1) would make such provision redundant.
- (17) It is the decision of the Agrarian Tribunal to award compensation that resulted in an appeal to the Board of Review, the High Court and finally to this Court.

Appeal against the decision of the Agrarian Tribunal

- (18) Section 7(6) of the Act, as it stood prior to its repeal and replacement by the Amendment Act in 2011, provided for a person dissatisfied with an order of an Agrarian Tribunal to lodge an appeal with the Court of Appeal on a question of law. In terms of Section 7(7) of the Act, where at an inquiry the Agrarian Tribunal holds that the eviction of a tenant cultivator has been established and either an appeal has not been made, or the Court of Appeal upholds the decision of the Agrarian Tribunal, the person evicted shall be entitled to have the use and occupation of the extent of paddy land restored to him. This provision is identical to Section 5(7) of the 1979 Act.

(19) Section 6 of the Amendment Act repealed and replaced the aforementioned Section 7(6) and 7(7) of the Act with Section 7(6), (6A) – (6D), and Section 7(7), respectively. While Section 7(6A) provided for an additional level of review by way of an appeal to the newly established Board of Review on a question of law or fact, Section 7(6C) provided for an appeal against the decision of the Board of Review to the High Court of the Province on a question of law.

(20) Section 7(7) introduced by the Amendment Act provided as follows:

“Where at any inquiry referred to in subsection (6B) the Board of Review decides that—

(a) eviction has taken place and no appeal has been made under subsection (6C) against such decision within the time allowed therefor or the High Court of the Province has, in an appeal made under subsection (6C) confirmed the decision of the Board of Review; or

(b) eviction has not taken place and the High Court of the Province has, in an appeal made under subsection (6C), varied the decision of the Board of Review and confirmed the fact that eviction has in fact taken place,

then, in any one of the above situations—

(i) the person evicted shall be entitled to have the use and occupation of the extent of paddy land restored to him; ...”

(21) Even though prior to the Amendment Act in 2011, a finding by the Agrarian Tribunal that a tenant cultivator has been evicted which is not appealed or is affirmed in appeal entitled the tenant cultivator to the restoration of the right to use and occupy the extent of paddy land from which he had been evicted, Section 7(7) after its amendment in 2011 does not contain a reference to an Agrarian Tribunal but is limited to a finding by the Board of Review or the High Court. Be that as it may, I am of the view that even after the Amendment Act, a finding by an Agrarian Tribunal that a tenant cultivator has been evicted against which there is no appeal must result in the restoration of the right to use and cultivate the said land in the said tenant cultivator. This is however subject to the provisions of Section 1B(1) of the Amendment Act.

- (22) Aggrieved by the said decision of the Agrarian Tribunal that he is entitled for compensation instead of restoring him to the possession of the paddy land after 35 years of the eviction of Sudusinghe, the Appellant filed an appeal with the Board of Review only with regard to the payment of compensation. By its decision delivered on 27th August 2019, the Board of Review, having observed that the decision of the Agrarian Tribunal that the tenant cultivator had been evicted has not been challenged by the Respondent, held that in terms of Section 1B(1), the power to award compensation is vested with the Commissioner General and that the Agrarian Tribunal does not have the power to act in terms of Section 1B(1). I must state that the Board of Review erred in this regard since the Agrarian Tribunal did not make an award for compensation but only upheld the entitlement of the Appellant to be compensated for the wrongful act of the owner, for which the Respondent is liable.
- (23) The Respondent thereafter invoked the appellate jurisdiction of the High Court. By its judgment delivered on 30th July 2021, the High Court, having referred to the transitional provisions contained in the Act, held that even though the dispute had taken place in 1982 at a time when the 1979 Act was applicable, the provisions of the Act including the provisions of Section 1B(1) shall apply in determining the rights of the parties. The High Court thereafter proceeded to set aside the decision of the Board of Review, thus restoring the decision of the Agrarian Tribunal.
- (24) Thus, the current position is that even though Sudusinghe had been evicted as a tenant cultivator, the Appellant or his successor shall not be entitled to the restoration of possession to the said land but shall only be entitled to the payment of compensation.

Question of Law

- (25) Aggrieved by the judgment of the High Court, the Appellant sought and obtained from the High Court leave to appeal to this Court on two questions of law. However, at the hearing, the learned Counsel for the Appellant submitted that he would be limiting his submissions to the following question of law:

“Whether the provisions of the Agrarian Development Act, No. 46 of 2000 as amended by Act No. 46 of 2011 is applicable to a dispute that had arisen prior to its enactment.”

- (26) Although the above question of law is general in form, the contention of the learned Counsel for the Appellant was that Section 99(2)(e), re-produced in paragraph 28 hereof, is limited to the procedure that must be followed by an Agrarian Tribunal and does not extend to the remedies that have been provided under the Act, and in particular to the remedy contained in Section 1B(1).
- (27) The starting point in determining the above question of law is Section 6(3) of the Interpretation Ordinance, which reads as follows:

“Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -

- (a) the past operation of or anything duly done or suffered under the repealed written law;*
- (b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;*
- (c) any action, proceeding, or thing pending or incompleated when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal.”*

- (28) However, in this instance, resort must not be had to the above section since Section 99(2)(e) of the Act has specifically provided as follows:

“Notwithstanding the repeal of the Agrarian Services Act, No. 58 of 1979, all proceedings pending before an inquiring officer or a Board of Review under the provisions of the Agrarian Services Act, No. 58 of 1979 on the day preceding the date of commencement of this Act, shall be deemed to be proceedings instituted before the corresponding Agrarian Tribunal established by this Act and may be continued and concluded before such Agrarian Tribunal under this Act.”

- (29) While neither of the learned Counsel questioned the power of an Agrarian Tribunal established under the Act to have conducted an inquiry into the complaint of Sudusinghe that relates back to 1982, it is clear from Section 99(2)(e) that the Agrarian Tribunal established under the Act was competent not only to inquire into the complaint of Sudusinghe but to conclude such matter which to my mind includes the right to apply the remedies that are available under the Act. To hold otherwise would lead to an absurdity, with an Agrarian Tribunal having to zig zag between two laws. Thus, I am of the view that the power to conduct an inquiry includes the power to grant the remedies that are provided under the Act. For this reason, I am unable to agree with the said contention of the learned Counsel for the Appellant.
- (30) The dispute that gave rise to this appeal commenced almost 44 years ago and must be laid to rest as soon as possible. The owner acted wrongfully when he evicted Sudusinghe from the paddy land in question. While Sudusinghe and the Appellant, being his successor would, under normal circumstances, have been entitled to the possession of the paddy land, the intervening circumstances have ensured that the Appellant or his successors shall only be entitled to the payment of compensation from the new owner of the land, that being the Respondent. The Respondent is entitled to cultivate the paddy land in question only due to the provisions of Section 1B(1) being applicable but the Respondent shall be liable to compensate the Appellant if an application is made by the Appellant to the Commissioner General for compensation.
- (31) In terms of Section 1B(2), *“Regulations shall be made specifying the criteria to be taken into account in making an order for the payment of compensation in terms of the above proviso and the basis on which the amount to be paid as compensation is to be determined.”* If regulations have been made, the Commissioner General shall proceed to make an award for compensation in terms thereof. However, if regulations have not been made, the Commissioner General shall nonetheless proceed to hear the parties and make an order for the payment of compensation by the Respondent to the Appellant within six months of an application being made to him by the Appellant.

Conclusion

(32) In the above circumstances, I answer the question of law in the affirmative. This appeal is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J

I agree

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree.

JUDGE OF THE SUPREME COURT