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

In the matter of an Application for mandates in the nature of a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 322/2017

1. Ranawaka Radage Asilyn.

1A. M.H Gnanawathi.

2. Weerakkodige Senehalatha Sumanapala,
23/45, Jayamana Walawwatta,
Mirigama.

3. M.H Gnanawathi.

1st, 1A and 3rd Petitioners at "Sanasuma" Ihala Muruthange, Muruthange.

PETITIONERS

Vs

1. Assistant Commissioner General,
Agrarian Department, Kurunegala.

2. District Development Officer,
Agrarian Development District Office,
Kurunegala.

3. U.P. Siripala,
Agrarian Tribunal (Zone 2),
Agrarian Centre, Kuliyapitiya.

4. K.A. Piyaratne.

5. R.K. Dehideniya.

6. P Weerasekara.
4th – 6th Respondents are Members of the Agrarian Board of Review,

Agrarian Department,
No. 42, Sir Marcus Fernando Mawatha,
Colombo 7.

7. K.H. Wimaladasa,
Konegahamula Watta, Muruthange

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Dr. Sunil F. Cooray with Nilanga Perera for the Petitioners

Suranga Wimalasena, Senior State Counsel for the 1st – 3rd Respondents

Ms. Dilushi Munasinghe for the 7th Respondent

Argued on: 4th August 2020

Written Submissions: Tendered on behalf of the Petitioners on 3rd March 2020 and 8th September 2020

Tendered on behalf of the 7th Respondent on 28th July 2020 and 5th October 2020

Decided on: 23rd October 2020

Arjuna Obeyesekere, J

The 1st Petitioner, who at the relevant time was 85 years of age, and her son, K.H.Sumanapala were the owners of a paddy land situated in Kurunegala known as '*Yaddessaawala Kumbura*' by virtue of Deed No. 25887. Sumanapala had passed away prior to the dispute that has given rise to this application. While the 2nd Petitioner is the wife of Sumanapala, the 3rd Petitioner is the daughter of the 1st Petitioner, and the sister of Sumanapala.

The 7th Respondent is the tenant cultivator of the said paddy land. On 10th April 2013, he had made a complaint to the 1st Respondent, the Assistant Commissioner General of Agrarian Development, that the 3rd Petitioner had evicted him from the paddy land on 25th November 2012.[1] In the said complaint, the name of Sumanapala is given as the landlord, while the 3rd Petitioner is referred to as the person occupying the land. In a previous complaint made by the 7th Respondent, he had stated that the fertilizer, weedicide, seed paddy etc. to carry out the cultivation was provided by the 3rd Petitioner.[2]

Section 7(3) of the Agrarian Development Act No. 46 of 2000, as amended by the Agrarian Development (Amendment) Act No. 46 of 2011 (the Act), provides as follows:

> "*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*."

By letter dated 16th August 2013,[3] the 1st Respondent had forwarded the said complaint of the 7th Respondent to the Agrarian Tribunal of which the 3rd Respondent was the sole member.

Section 7(6) of the Act reads as follows[4]:

> "*The landlord of the extent of paddy land and the person evicted shall be given an opportunity of being heard in person or through a representative, at an inquiry held by the respective Agrarian Tribunal. On the conclusion of the inquiry, the decision of the Agrarian Tribunal shall be communicated in writing by registered post to the Commissioner-General, the landlord and the person evicted*."

[1] Vide page 263 of 'P1'.
[2] Vide statement made on 21st November 2012 at page 205 of 'P1'.
[3] Vide page 261 of 'P1'.
[4] Introduced by the Amendment Act.

The word "landlord" has been defined in Section 101 of the Act as follows:

> "*Landlord with reference to an extent of paddy land means the person other than an owner cultivator, who is for the time being entitled to the rent in respect of such extent if it were let on rent to any person and includes any tenant of such extent who lets it to any subtenant.*"

Thus, to be the landlord for the purposes of the Act, a person need not be the owner of such paddy land.

By letter dated 7th March 2015, the Secretary of the Agrarian Tribunal (the Tribunal) had noticed the 7th Respondent and Sumanapala to appear before the Tribunal on 27th March 2015. On that date, the 3rd Petitioner had appeared and informed the Tribunal that Sumanapala had passed away prior to the complaint being made. However, the 3rd Petitioner had sought time to discuss with the family members a possible resolution of the dispute.

On the next date – i.e. 28th April 2015, as there was no settlement, the inquiry had been fixed for 15th May 2015. On that date, the 3rd Petitioner had produced to the Tribunal a letter appointing a representative to appear on her behalf at the said Inquiry. The 3rd Petitioner had continued to appear before the Tribunal, had given evidence, and led the evidence of two witnesses on her behalf. Thus it is clear that the 3rd Petitioner had participated fully before the Tribunal.

In the written submissions that were filed at the conclusion of the inquiry, the 3rd Petitioner had taken up the position that she is not the landlord of the said paddy land and that the Tribunal cannot make an Order without hearing the 1st Petitioner, who the 3rd Petitioner claimed was the landlord of the said paddy land. It must be noted that the 1st Petitioner never made an application before the Agrarian Tribunal seeking permission to appear before the Tribunal, although the 1st Petitioner, by virtue of the fact that she was living with the 3rd Respondent by that time, may have been aware of the inquiry that was being conducted.

By its Order delivered on 19th May 2016, the Tribunal, having carefully considered the evidence that was led before it:

(a) Overruled the said objection that the 3rd Petitioner is not the landlord; and

(b) Held that the 7th Respondent had been evicted from the said paddy land.

Section 7(5) of the Act provides that, "*If at the inquiry held by the Agrarian Tribunal, it is proved to the satisfaction of the Agrarian Tribunal that the tenant cultivator had been evicted from such extent, it shall be presumed, unless the contrary is proved, that such eviction had been made by, or at the instance of, the landlord*."

In terms of Section 6A of the Act, "*The landlord or the person evicted who is aggrieved by the decision of the Agrarian Tribunal may, within thirty days of the communication of the decision to him, appeal therefrom to the Board of Review established under section 42A either on a question of law or fact. Such appeal shall be submitted to the Commissioner-General within the time period allowed for such appeal and the Commissioner- General shall forthwith refer such appeal to the Panel appointed under subsection (1) of section 42A to be heard and concluded by a Board of Review established under the provisions of subsection (5) of section 42A*."

The 3rd Petitioner has admitted that she received the said Order on 20th May 2016. She has lodged an appeal against the said Order by a petition of appeal dated 15th June 2016. According to the date stamp affixed by the Board of Review, the petition had been received by the Board of Review only on 22nd June 2016.

Section 6B of the Act provides as follows:

> "*The Board of Review established under subsection (5) of section 42A shall inquire into all appeals referred to such Board under subsection (6A) and inform the parties thereto and the Commissioner-General in writing by registered post of its decision thereon*."

In terms of Section 42A(10), "*A Board of Review may examine any witness on oath if it thinks fit so to do, and may summon any person to appear before it or to produce any documents which may be relevant in the opinion of the Board."*

By its Order dated 29th July 2017, the Board of Review had dismissed the appeal of the 3rd Petitioner on three grounds. The first and the main ground is that the 3rd Petitioner is not entitled to lodge an appeal as the 3rd Petitioner is not the landlord of the said paddy land. The second is that the petition of appeal has been lodged outside the thirty day period provided in Section 6A. The third ground is that in any event, the Tribunal was correct when it reached the finding that the 7th Respondent has been evicted from the said paddy land. It is therefore clear that the primary argument of the Petitioners to this Court that the landlord was not afforded a hearing has not been considered by the Board of Review.

In terms of Section 6C of the Act, "*The landlord or the person evicted who is aggrieved by the decision of the Board of Review may, within thirty days of the communication of the decision to him, appeal to the High Court of the Province against such decision on a question of law. A copy of the appeal shall be sent to the Commissioner- General by registered post at the time when the appeal is made*."

It is admitted by the 3rd Petitioner that she exercised her right of appeal to the High Court of the Province on 30th August 2017, and that the said appeal is presently pending before the Provincial High Court of the North Western Province, holden in Kurunegala.[5]

Where the Tribunal holds that the tenant cultivator has been evicted, and either where no appeal has been made against such Order to the Board of Review and the High Court, or where an appeal made against such Order to the Board of Review and the High Court has been dismissed, the following consequences would flow.[6]

First, the person evicted shall be entitled to have the use and occupation of the extent of paddy land restored to him. Second, the Commissioner-General shall on receipt of the decision of the Board of Review or the High Court of the Province, as the case may be, require all persons in occupation of the extent of paddy land in dispute to vacate such extent on or before such date as shall be specified in such order. If such persons fail to comply with such order, they shall be evicted from such extent in accordance with the provisions of section 8. Third, the landlord of such

[5] Vide the Petition of Appeal marked 'P5'.
[6] Vide Section 7(7) of the Act.

extent shall be required to pay damages at such rate as may be prescribed to the person mentioned in Section 7(7)(c)(i), for each day during which such person in respect of whom an order has been made, continues to occupy such extent after the date specified in such order, unless the Board of Review or the High Court of the Province has determined that such person was evicted without the knowledge, consent or connivance of the landlord.

In terms of Section 7(8), "*Where the landlord of the extent of paddy land falls or refuses to pay within fourteen days after demand, any sum which he is required to pay as damages under subsection (7) such sum may, on application made by the person evicted to the Magistrate's Court having jurisdiction over the place where such extent is situated, be recovered in like manner as a fine imposed by such Court notwithstanding that such sum may exceed the amount of the fine which that Court may in the exercise of its ordinary jurisdiction impose*."

The 3rd Petitioner, having exercised her right of appeal to the High Court, filed this application together with the 1st and 2nd Petitioners, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision made by the Agrarian Tribunal that the provisions of Section 7(3) of the Agrarian Development Act No. 46 of 2000, as amended, has been violated;

b) A Writ of Certiorari to quash the decision of the Board of Review comprising of the 4th – 6th Respondents.

The complaint of the learned Counsel for the Petitioners to this Court is twofold. The first is that the landlord of the said paddy field is the 1st Petitioner, and that the Tribunal *erred* when it held that the 3rd Petitioner is the landlord of the said paddy field. The second is that the Tribunal did not afford the landlord – i.e. the 1st Petitioner - a hearing before it arrived at its decision. In other words, the contention of the Petitioners is that the Order of the Tribunal is illegal as it was made in the absence of the participation of the 1st Petitioner, whom the Petitioners claim is the rightful landlord.

It must be noted that although the Petitioners allege that the 2nd Petitioner too had a right to be heard by the Tribunal, the 2nd Petitioner is not an active participant in this claim, nor has any evidence been led before the Tribunal that she has any involvement with the paddy land, other than being the wife of Sumanapala.

While this application was pending, the 1st Petitioner passed away. Even though the application to substitute the 3rd Petitioner in place of the 1st Petitioner to prosecute this application was allowed by this Court,[7] the necessity for this Court to consider if the Order of the Tribunal is illegal as the 1st Petitioner was not given a hearing does not arise in view of the said change in circumstances. By substituting the 3rd Petitioner in place of the 1st Petitioner, the 3rd Petitioner would not be entitled to a hearing before the Tribunal.

The questions that are left to be answered are therefore in relation to the rights of the 3rd Petitioner, namely:

(a) Whether the decision of the Tribunal to consider the 3rd Petitioner as the landlord was reasonable and legal;

(b) Whether the decision of the Board of Review that the 3rd Petitioner does not have the *locus standi* to have and maintain the appeal, is legal.

I am of the view that the question of determining who is the landlord is a question of fact that must be determined by the Tribunal considering the oral evidence and other material placed before the Tribunal. The Tribunal has accordingly considered the evidence led before it, and arrived at the decision that the 3rd Petitioner is the landlord. It is not the role of this Court in exercising its Writ jurisdiction to determine if such conclusion is right or wrong. The Act has provided an aggrieved landlord or the tenant cultivator multiple fora – i.e. the Board of Review and the Provincial High Court - to address such issues.

The issue that is left to be determined is with the decision of the Board of Review. As I have already observed, the Board of Review has held that the *3rd Petitioner was not the landlord*, and thus had no *locus standi* to maintain the appeal against the Order

[7] Vide journal entry of 13th November 2019.

of the Tribunal. The Board of Review nonetheless went on to affirm the Order of the Tribunal, as the 7th Respondent had been evicted by the 3rd Petitioner.

This Order of the Board of Review contains several contradictions.

The first is, by holding that the 3rd Petitioner does not have the *locus standi* to maintain the appeal before the Board of Review as she is not the landlord, the Board of Review had differed from the findings of the Tribunal, which proceeded on the basis that the 3rd Petitioner was the landlord. If it was the view of the Board of Review that the 3rd Petitioner was not the landlord, it ought to have allowed the appeal, instead of proceeding to affirm the Order of the Tribunal.

The second is that the Order of the Board of Review, as it stands now, would have the absurd effect of imposing on a person whom they have concluded is not a landlord, obligations that can only be imposed according to the provisions of the Act, on a landlord.

The third is that even if the Board of Review was of the view that the 3rd Petitioner was not the landlord, it could not have concluded that the 3rd Petitioner did not have the *locus standi* to maintain the appeal, as in terms of Section 42 of the Act (as amended) '***any party aggrieved by the decision of an Agrarian Tribunal*** *on any application or complaint referred to it under this Act, may make an appeal to a Board of Review established under Section 42A, within thirty days from the date of receipt of such decision*.' The 3rd Petitioner, by virtue of being a party to the proceedings before the Agrarian Tribunal was entitled to a right of appeal as provided for by Section 42. I must state that the right of appeal conferred by Section 42 is not in derogation of the specific right of appeal provided by Section 7(6) against an Order made under Section 7(3).

Thus, I am of the view that the Order of the Board of Review is liable to be quashed by a Writ of Certiorari as it acted illegally when it held that the 3rd Petitioner does not have the *locus standi* to have and maintain her appeal.

I shall now consider the two objections raised by the learned Senior State Counsel and the learned Counsel for the 7th Respondent, in order to determine if the relief prayed for should be granted. They are as follows:

(a) The legislature has provided the landlord with a statutory right of appeal to the Provincial High Court, which right has in fact been exercised, and therefore, this Court should not exercise its discretion in favour of the Petitioners; and

(b) That the application of the 3rd Petitioner to the Board of Review is out of time.

I am attracted by the argument of the learned Counsel for the Respondents that the Petitioners have invoked the alternative remedy provided by the Act, and that the two issues that have been raised in this application could be canvassed before the High Court. Even though the 3rd Petitioner will have a full audience before the High Court, where the findings of the Board of Review can be canvassed, such an audience will be limited to a question of law. Even assuming that the High Court holds that the 3rd Petitioner has the *locus standi* to have and maintain the appeal, the High Court may not be able to consider the facts relating to the question as to who is the landlord, as its appellate power has been circumscribed by the Act to questions of law. The result of upholding the argument that the Petitioners have an alternative remedy may result in the 3rd Petitioner and the 7th Respondent being deprived of a hearing by the Board of Review on the merits. Hence, my decision not to uphold the first objection raised by the learned Counsel for the Respondents.

With regard to the objection that the appeal to the Board of Review is out of time, I must observe that the 3rd Petitioner has taken up the position in her petition of appeal to the High Court that the petition of appeal was sent by post to the Board of Review on 16th June 2016 and referred to a postal receipt article in support thereof. The 3rd Petitioner has however not produced the said document to this Court. This position of the Petitioner, if correct, rebuts the objection of the Respondents that the appeal has been filed out of time, and is a matter that can be addressed by the Board of Review.

In the above circumstances, I issue a Writ of Certiorari quashing the order of the Board of Review. The Board of Review is directed to hear the appeal lodged by the 3rd Petitioner and arrive at a determination in terms of the law. The Board of Review shall afford the parties an opportunity of presenting material to substantiate their respective positions with regard to due compliance with the time period in presenting the appeal. I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal