

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

**C.A. (PHC) No. 0064/2014**

**P.H.C. Kalmunai No:  
HC/KA/RV/64/2012**

**M.C. Sammanthurai No:  
2944/PVT/12**

In the matter of an appeal from the High Court of the provinces (Eastern Province) holden in Kalmunai established in terms of Article 154P of the Constitution of the Democratic Socialist of Sri Lanka read with Rule No 2 of the Court of Appeal (Procedure for Appeals from High Courts) Rules and section 11 of Act No. 19 of 1990 of the High Court (Special Provisions) Act.

Assistant Commissioner,  
Department of Agrarian Development,  
Ampara.

**Applicant**

**Vs**

1. M.Z.M.Munas Kariyappar,  
2. M.M.K. Mufaris Kariyappar,  
Both of T.C Road,  
Sammanthurai.

**Respondents**

**AND BETWEEN**

1. M.Z.M.Munas Kariyappar,  
2. M.M.K. Mufaris Kariyappar,

Both of T.C Road,  
Sammanthurai.

**Respondents-Petitioners**

**Vs**

Assistant Commissioner,  
Department of Agrarian Development,  
Ampara.

**Applicant-Respondent**

1. Mohideen Bawa Fousadeen  
No.431 A/1, Saly Road, Sammnanthurai.

2. Mohiedeen Bawa Abdul Majeed  
No.51/A Palavadi Lane,  
Sammanthurai-04

3. Mohidean Bawa Abdul Calam,  
No. 373 A Noor Junction, 1<sup>st</sup> Cross Street,  
Sammanthurai.

4. The Attorney General,  
The Attorney General's Department  
Colombo-12

**Respondents**

**AND NOW BETWEEN**

1. M.Z.M.Munas Kariyappar, (deceased)

2. M.M.U. Mufaris Kariyappar,  
Both of T.C Road, Samanthurai.

**Respondents-Petitioners-Appellants**

**Vs**

Assistant Commissioner,  
Department of Agrarian Development,  
Ampara.

**Applicant-Respondent-Respondent**

1. Mohideen Bawa Fousadeen,  
No.431 A/1, Saly Road, Sammnanthurai.

2. Mohiedeen Bawa Abdul Majeed,  
No.51/A Palavadi Lane,  
Sammanthurai-04.

3. Mohidean Bawa Abdul Calam,  
No. 373 A Noor Junction, 1<sup>st</sup> Cross Street,  
Sammanthurai.

4. The Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents -Respondents**

Before : **D. THOTAWATTA, J.**  
**K. M. S. DISSANAYAKE, J.**

Counsel : Arif Sunmueen with S. Thanikumar for the

Respondents-Petitioners-Appellants.

Rifana Muktar, S.C. for the Applicant-Respondent-Respondent and 4th Respondent- Respondent.

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents-Respondents are absent and unrepresented.

Argued on : 23.01.2026

Written Submissions  
of the 2<sup>nd</sup> Respondent  
-Petitioner-Appellant  
tendered on : Tendered but undated.

Written Submissions  
of the Applicant- Respondent-  
Respondent and  
4<sup>th</sup> Respondent-Respondent  
tendered on : 29.11.2019

Decided on : 22.05.2026

**K. M. S. DISSANAYAKE, J.**

The instant appeal arises from an order of the learned High Court Judge of the Eastern Province holden at Kalmunai dated 17.06.2014 (hereinafter called and referred to as ‘the HC order’) made in the exercise of the revisionary jurisdiction vested in him under Article 154P(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’) whereby, the learned High Court Judge had dismissed an

application in revision filed before it by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Petitioners-Appellants (hereinafter called and referred to as ‘the 1<sup>st</sup> and 2<sup>nd</sup> Appellants’) against the order of the Learned Magistrate of Sammanthurai dated 09.03.2012 (hereinafter called and referred to as ‘the MC order’), whereby, the Learned Magistrate of Sammanthurai had in pursuant to a written report presented thereto by the Applicant-Respondent-Respondent-Assistant Commissioner of Department of Agrarian Development, Ampara (hereinafter called and referred to as ‘the Applicant Respondent’) by virtue of the powers vested in him under section 8(1) to be read with section 7(7) of the Agrarian Development Act No. 46 of 2000 (hereinafter called and referred to as ‘the Act’) seeking eviction of the 1<sup>st</sup> and 2<sup>nd</sup> Appellants and all those in occupation of the Paddy Land in extent of approximately, 08 Acres 02 Roods 21 Perches as morefully, shown and depicted in the said written report presented to the Magistrate Court of Sammanthurai and to deliver possession thereof to the aggrieved party mentioned in the written report as the person to whom delivery of possession thereof, should be made, directed the Fiscal to forthwith evict the 1<sup>st</sup> and 2<sup>nd</sup> Appellants and all those in occupation and to deliver possession thereof, to the aggrieved party mentioned in the written report.

It is to be noted that during the pendency of the instant appeal before us, the 1<sup>st</sup> Appellant had passed away and the 2<sup>nd</sup> Appellant had in his affidavit dated 21.09.2020 furnished to this Court along with the motion dated 22.09.2020, notified to Court that the appeal will be proceeded by him notwithstanding the death of the 1<sup>st</sup> Appellant who being his father by reason of the fact that the land in dispute had been transferred to him by his father during his life time in the manner as stated in his affidavit.

The dismissal of the application in revision filed by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants before the High Court of Eastern Province holden at Kalmunai impugning the MC order is mainly, based on the findings of the learned High Court Judge of Kalmunai that MC order contains no illegality or procedural impropriety. It is this order that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants now, sought in the instant appeal to

impugn before us on the grounds of appeal urged by them in paragraph 29 (a),(b),(c),(d),(e),(f) and (g) of the petition of appeal and they may be reproduced *verbatim* the same as follows;

“a. The said judgment dated 17.06.2014 of the Provincial High Court of Kalmunai is contrary to law and against the weight of evidence;

b. The learned Provincial High Court Judge erred by failing to consider that the Commissioner-General could order eviction only as provided by the Act, that is;

The Act grants the power to the Commissioner General or the Assistant Commissioner read together with Section 38 of the Act to order eviction under Section 7(7) (b)ll which provides as follows.

"(ii) The Commissioner-General shall on receipt of the decision of the Agrarian Tribunal or the Court of Appeal, as the case may be, in writing order that every person in occupation of the extent of paddy land shall vacate it on or before such date as shall be specified in such order and if such person fails to comply with such order, he shall be evicted from such extent in accordance with the provisions of Section 8: and"

In the circumstances for the Commissioner to order eviction under Section 7(7)(b)ll there has to be an order by the Agrarian Tribunal or the Court of Appeal as the case may be. There is no other provision under the Act granting the power to the Commissioner General to order eviction.

c. The learned Provincial High Court Judge erred by failing to consider that an inquiry by the Agrarian Tribunal has to be commenced and held as provided in Section 7(3), 7(4), 7(5), 7(6) of the said Act. These subsections deal with the unlawful eviction of a purported tenant cultivator.

d. The learned Judge of the Provincial High Court erred by failing to consider that the purported inquiry was conducted under 7(14) of the Act which provides for as follows:

7.14 "If any person directly or indirectly makes use of, or threatens to make use of, force, violence or restraint, or inflicts or threatens to inflict, any harm, damage or loss upon or against a tenant cultivator of any extent of paddy land in order to induce, compel or prevail upon that tenant cultivator to refrain from exercising and right or privilege conferred upon him by or under this Act, such person shall be deemed to interfere in the occupation and use of such extent by that tenant cultivator".

Therefore the purported order for eviction made in terms of Section 8(1) of the said the Act, cannot be based on Section 7 (14) as set out in the application filed by the Assistant Commissioner.

e. The learned Provincial High Court Judge failed to consider that further to Section 7 (14) the Assistant Commissioner is only entitled to prosecute the Appellants under Section 7(15) of the Act which provides as follows;

"Any person who contravenes the provisions of this section shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding five thousand rupees".

In fact the Assistant Commissioner prosecuted the Appellants under the above section by filing reports in the Magistrate's Court, Kalmunai in style and numbers 55338/PR/09, 55339/PR/09, 55340/PR/09 in which actions the Appellants were acquitted (vide P11, P12 and P13). No appeals were preferred against the said acquittals.

f. In any event the learned Judge of the Provincial High Court erred by failing to consider that the provisions of the said Act only permit the Commissioner General to evict the landlord from the impugned land and if it is the position of the Applicant-Respondent-Respondent that the Respondents-Petitioners-Appellants are not the landlords of the purported tenant cultivators, then the Commissioner General does not have power to evict the Respondents-Petitioners-Appellants.

g. The learned Judge of the Provincial High Court erred by holding that the Appellants have failed to set out exceptional circumstances warranting the exercise of the revisionary jurisdiction of the Provincial High Court.”

In addition, the following two grounds of appeal were also urged by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants in their petition of appeal;

“1. Does Commissioner has authority to order to vacate the paddy land in an inquiry conducted under section 7(14) of the Agrarian Development Act No: 46 of 2000?

2. Does the commissioner has authority to file report under section 8(1) of the Act to Magistrates court in an inquiry conducted under 7(14) of the Agrarian Development Act No. 46 of 2000?”

This case has a chequered history. As is discernible from the record, the 1<sup>st</sup> Appellant now deceased, had by the Deed of Transfer bearing No. 1187 dated 04.02.1977, become the owner of the paddy land which is the subject matter of the instant appeal; and that by a letter dated 28.09.2009, the 2<sup>nd</sup> to 4<sup>th</sup> Respondent-Respondents had brought to the notice of the Applicant-Respondent that they are the tenant cultivators of the said land; and that they had been evicted from the said land by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants; and that acting on the said complaint, the Applicant-Respondent had filed action in the Magistrate

Court of Kalmunai in terms of sections 7(14) and 7(15) of the Act; and that dissatisfied by the said decision to prosecute the 1<sup>st</sup> and 2<sup>nd</sup> Appellants without conducting an inquiry as provided for by section 7 of the Act, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had filed a writ application bearing No. 26/2009 in the High Court of the Eastern Province holden at Kalmunai seeking a Writ of *Certiorari* to quash the said decision to prosecute; and that however, while proceedings were pending before the High Court of Kalmunai, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had agreed to the Applicant-Respondent holding an inquiry as required by section 7 of the Act; and that the inquiry was accordingly, held in pursuant to which report dated 23.08.2010 had been prepared by the inquiring officer; and that having concluded that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants were trespassers, the Applicant-Respondent had proceeded to issue to them an order dated 23.08.2010 directing them to vacate the Paddy Land in dispute-the subject matter of the instant appeal by 17.09.2010 and to handover possession of the said Paddy Land to the 2<sup>nd</sup> to 4<sup>th</sup> Respondents-Respondents; and that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had also been informed that steps will be taken in terms of section 8(2) of the Act, if they do not comply, with the said order; and that even though the learned High Court Judge of Kalmunai dismissed the aforementioned writ application filed by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants after filing the said inquiry report dated 23.08.2010, before the learned Magistrate of Kalmunai had proceeded at the end of which the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had been acquitted in all three cases instituted under sections 7(14) and 7(15) of the Act, against them by Applicant-Respondent bearing Nos. 55338/PR/09, 55339/PR/09 and 55340/PR/09; and that on 08.03.2012 the Applicant-Respondent had filed proceedings acting under the powers vested in him by section 8(1) of the Act in the Magistrate's Court of Sammanthurai seeking an order to evict the 1<sup>st</sup> and 2<sup>nd</sup> Appellants from the said Paddy Land as they had not complied with the aforementioned order dated 23.08.2010; and that the said application having been granted by the learned Magistrate of Sammanthurai, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants being aggrieved thereby, had invoked the revisionary jurisdiction of the High Court of the Eastern Province

holden at Kalmunai against such order mainly, on the premise that even though section 7(3) of the Act requires an inquiry to be held by an Agrarian Tribunal, no such inquiry had been held and therefore, Applicant-Respondent had no jurisdiction to present a written report to the Magistrate Court of Sammanthurai under section 8(1) of the Act and therefore, order of eviction made by the learned Magistrate of Sammanthurai in the case bearing No. 2944/PVT/12 is *ex facie* bad in law and manifestly, erroneous and illegal for the reasons morefully, set out in paragraph 18 of the petition filed in the High Court of Eastern Province holden at Kalmunai in the said revision application bearing No. HC/KAL/ RV/ 64/12 and therefore, it should be revised and set aside by the High Court of the Eastern Province acting in revision; and that the learned High Court Judge of Kalmunai had by his order dated 17.06.2014(HC order), dismissed the application in revision by holding there had been no illegality or impropriety of the order of the learned Magistrate of Samanthurai dated 09.03.2012 (MC order); and that it is the HC order that the 1<sup>st</sup> and 2<sup>nd</sup> Appellants seek to canvass before us in the instant appeal.

The 1<sup>st</sup> and 2<sup>nd</sup> Appellants had in their application in revision, sought to impugn the MC order before the High Court of Eastern Province holden at Kalmunai mainly, on the premise that;

a) An application by the Commissioner General of Agrarian Development under Section 8(2) of the Act must be preceded by an Order of an Agrarian Tribunal;

b) The Commissioner General of Agrarian Development cannot conduct an inquiry in terms of Section 7(4) of the Act relating to an eviction, and that in terms of Sections 7(3) and 7(7) of the Act, such an inquiry can only be conducted by an Agrarian Tribunal;

c) No such inquiry has been held by an Agrarian Tribunal, and hence, the decision dated 23rd August 2010 to take steps in terms of Section 8(1) of the Act

is ultra vires the powers conferred on the Commissioner General in terms of the Act.

It was thus, contended by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants before the High Court of Eastern Province holden at Kalmunai that in the light of the above, the learned Magistrate of Sammanthurai had no jurisdiction to make an order of eviction under section 8(2) of the Act and therefore, order of eviction made by the learned Magistrate of Sammanthurai in the case bearing No. 2944/PVT/12 is *ex facie* bad in law and manifestly, erroneous and illegal for the reasons morefully, set out in paragraph 18 of the petition filed in the High Court of Eastern Province holden at Kalmunai in the said revision application bearing No. HC/KAL/ RV/ 64/12 and therefore, it should be revised and set aside by the High Court of the Eastern Province holden at Kalmunai acting in revision.

It is in this context, it would now, be pertinent to examine section 8 of the Act, and the part relevant to the instant appeal may be reproduced *verbatim* the same as follows;

“(1) Where any person who has been ordered under this Act, by the Commissioner-General to vacate any extent of agricultural land, fails to comply with such order, the Commissioner-General or any other person authorised in that behalf by the Commissioner-General may present to the Magistrate's Court within whose local jurisdiction such extent wholly or mainly lies, a written report”

(a) setting out the nature of such order and the person to whom it was issued, describing the extent of land to which such order relates;

(b) stating that the person who has been ordered to vacate has failed to so vacate such extent of land ; and

(c) praying for an order to evict such person and all other persons in occupation of such extent of land from such extent, and stating the

name of the person to whom delivery of possession of such extent should be made.

(2) Where a written report is presented to a Magistrate's Court under subsection (1), such court shall direct the Fiscal or peace officer to forthwith evict the person specified in such report and all other persons in occupation of the extent of agricultural land specified in the order and to deliver possession of such extent to the person mentioned in such report as the person to whom delivery of possession of such extent should be made.”

Upon a careful analysis of section 8(1) and 8(2) of the Act, all together, it becomes manifest that where a written report is presented to a Magistrate's Court under subsection (1), such court shall direct the Fiscal or peace officer to forthwith evict the person specified in such report and all other persons in occupation of the extent of agricultural land specified in the order and to deliver possession of such extent to the person mentioned in such report as the person to whom delivery of possession of such extent should be made.

In the light of section 8(1) and 8(2) of the Act, it clearly, appears that a order of eviction that may be made by a Magistrate under section 8(2) of the Act in pursuant to a written report presented to it by the Comississioner of Agrarian Development is merely, a ministerial act and therefore, section 8 of the Act leaves no room whatsoever for anyone aggrieved thereby, to question before a Magistrate Court as to the legality or the propriety of the order that may be made by the Comississioner of Agrarian Development under section 7(7) of the Act directing to vacate the such extent of Paddy Land on or before the date specified therein in an action instituted in a Magistrate Court by the Commissioner of Agrarian Development by presenting to it a written report under Section 8(1) of the Act for; the Magistrate Court is not the proper forum before which such a challenge may be raised as to the legality or the propriety of an order that may be made by the Comississioner of Agrarian Development under

section 7(7) of the Act directing to vacate such extent of Paddy Land on or before the date specified therein, but, that question as to the legality or the proprietary of an order that may be made by the Comississioner of Agrarian Development under section 7(7) of the Act directing to vacate the such extent of Paddy Land on or before the date specified therein, should be raised in a Court vested with writ jurisdiction by way of an order in the nature of a Writ of *Certiorari* as done by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants in the writ application bearing No. CA(Writ) Application No. 226/2014 filed before this Court which was dismissed by this Court by its order dated 30.09.2020.

In the light of the law set out above, I cannot see anything illegal or improper in the MC order as constituting exceptional circumstances warranting the invocation of the extra-ordinary revisionary jurisdiction vested in the High Court of the Eastern Province holden at Kalmunai in revision of the MC order as rightly, and correctly, held by the learned High Court Judge of the Eastern Province holden at Kalmunai in the impugned order (HC order).

Hence, I would see no error whatsoever, in the HC order.

I would, therefore, affirm both the HC order and the MC order.

In the result, I would dismiss the appeal with costs fixed at Rs. 50,000/- payable by the 2<sup>nd</sup> Appellant to the Applicant-Respondent.

***JUDGE OF THE COURT OF APPEAL***

**D. THOTAWATTA, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***