

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

Court of Appeal Case No.
CA (PHC)/0137/2018

PHC Kegalle Case No.
Writ/4933/2015

Vs

Petitioners

1. Padma Warnalatha Thennakoon,
NO.400, Ballapana, Galigamuwa Town.

2. Don Joseph Michael Munaweera,
No.400, Ballapana, Galigamuwa Town.

1. N.A.S. Weerasinghe,
Commissioner General of Agrarian
Development, No.56, Marcus Fernando
Mawatha, Colombo 07.
2. Anusha Dewapriya,
Assistant Commissioner of
Agrarian Development, District Office of
Agrarian Development, Gatabe,
Peradeniya.
3. K.A. Sumith Chandana, Assistant
Commissioner of Agrarian Development,
District Office of Agrarian Development,
Kegalle.
4. Kuruppu Arachchilage Abeyrathna
Siyambalapitiya, Yattogoda.
5. Kuruppu Arachchilage
Wijerathna, Siyambalapitiya, Yattogoda.

6. The Hon. Attorney General, Attorney General's Department, Colombo 12.

Respondents.

AND NOW

1. Padma Warnalatha Thennakoon,
No.400, Ballapana, Galigamuwa Town.
2. Don Joseph Michael Munaweera,
No.400, Ballapana, Galigamuwa Town.
- 2(A). Don Milinda Joseph Munaweera.
No.400, Ballapana, Galigamuwa Town.

Petitioners- Appellants

Vs.

1. N.A.S. Weerasinghe, Commissioner
General of Agrarian Development.
No.56, Marcus Fernando Mawatha,
Colombo 07.
2. Anusha Dewapriya,
Assistant Commissioner of
Agrarian Development, District Office of
Agrarian Development, Gatabe,
Peradeniya.
3. K. A. Sumith Chandana, Assistant
Commissioner of Agrarian Development,

District Office of Agrarian Development.
Kegalle.

4. Kuruppu Arachchilage Abeyrathna.
Siyambalapitiya, Yattogoda.

5. Kuruppu Arachchilage Wijerathna,
Siyambalapitiya, Yattogoda.

5(A). Thanuja Prasad Wijegunaratne.
Siyambalapitiya, Yattogoda.

6. The Hon. Attorney General, Attorney
General's Department, Colombo 12.

Respondent- Respondents.

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

Counsel : S. K. Chaminda Senavirathne for the
Petitioners-Appellants.
Subashini Cooray for the 4th and 5th
Respondent-Respondents.

Rajika Aluwihare, SC for the 1st to 3rd and
6th Respondent-Respondents.

Argued on : 26.03.2026

Written Submissions
of the Petitioners- Appellants

tendered on : 16.10.2020

Written Submissions

of the 1st, 2nd, 3rd, and 6th

Respondent- : 11.12.2024

Respondents tendered on

Written submission of 4th and

5th Respondent-Respondents

tendered on : 13.01.2021

Decided on : 25.08.2026

K. M. S. DISSANAYAKE, J.

Instant Appeal arises from an Order dated 30.07.2018 (hereinafter called and referred to as “the HC Order”) made by the learned High Court Judge of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as “the High Court Judge of the Province”) dismissing the above styled action instituted thereat by the Petitioners-Appellants(hereinafter called and referred to as “the Appellants”) against the 1st to 6th Respondents (hereinafter called and referred to as “the 1st to 6th Respondents”) seeking a Mandate in the nature of writ of *certiorari* to quash the decision made by the 3rd Respondent in his capacity as the Assistant Commissioner of Agrarian Development attached to District Office, Kegalle (hereinafter called and referred to as “the Assistant Commissioner of Agrarian Development”), a certified copy of which was annexed to the Petition marked as ‘ඉ12’ and a writ of *mandamus* directing the 1st, 2nd and 3rd Respondents to restore the water channel-the subject matter of the action, to its former position, by upholding the jurisdictional objection raised separately, by

the 1st, 2nd, 3rd and 6th Respondents on the one hand, and 4th and 5th Respondent on the other hand, but, on the same premise as to the maintainability of the action that High Court of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as “the High Court of the Province”) has no jurisdiction to entertain, hear and determine a writ application preferred thereto by a party aggrieved by an Order made by the Commissioner General of Agrarian Development under the provisions of the Agrarian Development Act No. 46 of 2000 as amended (hereinafter called and referred to as “the Act”).

As is discernible from a careful perusal of the Petition of Appeal, the Petitioners seek to impugn the HC Order mainly, on three grounds, namely;

- a) that, the learned High Court Judge of the Province had not directed his judicial mind to Section 16 of the Agrarian Development (Amendment) Act No. 46 of 2011 in the HC Order; (Vide-paragraph 2 of the Petition of Appeal)
- b) that, the binding judicial precedents relied on by the learned High Court Judge of the Province in the HC Order are those decided before 22.11.2011 (apparently, the day on which Agrarian Development (Amendment) Act No. 46 of 2011 had been certified by the Honourable Speaker of the Parliament of Democratic Socialist Republic of Sri Lanka); (Vide-paragraph 3 of the Petition of Appeal)
- c) that HC Order is bad in law. (Vide-paragraph 4 of the Petition of Appeal)

The facts relevant to the instant Appeal as is discernible from a careful perusal of the Petition of Appeal may be briefly, set out as follows;

Petitioners had lodged a complaint to the Agrarian Development Officer of Kegalle against the 4th and 5th Respondents alleging that the 4th and 5th had having unlawfully, cut down the water channel and or water course-the subject matter of the instant application for writ from which the Petitioners had drawn water to their paddy field for paddy cultivation, got it attached to the paddy field of the 4th and 5th Respondents; and that in pursuant to the complaint so lodged by the Petitioners against 4th and 5th Respondent, the Assistant Commissioner of Agrarian Development had having held an inquiry in to the complaint under section 83 of the Act, made Order contained in 0312 dismissing the complaint so made by the Petitioners against the 4th and 5th Respondents; and that the Petitioners being aggrieved by the Order (0312), had preferred an application to the High Court of the Province seeking a mandate in the nature of a writ of *certiorari* to quash the Order(0312) and a further mandate in the nature of *mandamus* directing the 1st, 2nd and 3rd Respondents to restore the water channel to its former position; and that the learned High Court Judge of the Province had having upheld the jurisdictional objection so raised by the Respondents as enumerated above, dismissed it on the premise as enumerated above. Hence, the instant Appeal therefrom.

The pivotal basis of the jurisdictional objection so raised by the Respondents separately, but, on the same premise before the High Court of the Province as enumerated above, is that the High Court of the Province has no jurisdiction to hear and determine the writ application filed by the Appellants against the Respondents before it against the Order (0312), made by the Assistant Commissioner of Agrarian Development under the provisions of the Act in the

view of the Thirteenth amendment to the Constitution, and in view of the section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and in view of the decision of the Supreme Court in **Wijesuriya vs Wanigasinghe and Others 2011 [2] SLR 231** as well as the unreported decisions of this Court in **CA(PHC)65/2010-Decided 29.04.2016** and **CA(PHC)122/2011-Decided 25.05.2016**. The Appellants on the other hand, sought to resist the jurisdictional objection raised before it on the premise that the learned High Court Judge of the Province had not directed his judicial mind to section 16 of the Act as amended by Act No. 26 of 2011 which confers jurisdiction on the High Court of the Province from the decisions of the Commissioner General of Agrarian Development made under the Act; and that in view of section 38(3) and (4) of the Act, the powers of the Commissioner General of Agrarian Development can be delegated to an Assistant Commissioner of Agrarian Development and/or a Deputy Commissioner of Agrarian Development and therefore, a decision of the Assistant Commissioner of Agrarian Development and/or a Deputy Commissioner of Agrarian Development is amendable to the writ jurisdiction of the High Court of the Province and as such the High Court of the Province has jurisdiction to hear and determine the instant application made to it by the Appellants for a mandate in the nature of a writ of *certiorari* and *mandamus*.

Hence, the pivotal question of law that would now, arise before us for our determination in the instant Appeal is whether an Order made by the Assistant Commissioner of Agrarian Development under the provisions of the Act is amenable to the writ jurisdiction of a High Court established under Article 154P(1) of the Constitution.

It may now, be examined.

Article 154 P (4) (b) of the Constitution would be relevant in this regard and it reads thus;

“Every such High Court shall have jurisdiction to issue, according to law-

b) Order in the nature of Writ of *Certiorari*, *Prohibition*, *Procedendo*, *Mandamus* and *quo warranto* against any person exercising within the province any power under-

1. any law; or

11. any statute made by the Provincial Council established for that Province,

In respect of any matter set out in the Provincial Council List.”

Out of the 37 subjects enumerated in the Provincial Council List, item 9 of the Provincial Council list reads thus;

“9. Agriculture and Agrarian Services:-

9.1. Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than interprovincial irrigation and land settlement schemes, state land and plantation agriculture)

9.2. **Rehabilitation and maintenance of minor irrigation works**

9.3 Agricultural research, save and except institutions designated as national agricultural research institutions. [Emphasis is mine]

In the light of the above, it becomes manifestly, clear that with the enactment of the 13th amendment to the Constitution and with the introduction of Provincial Councils in furtherance of the 13th amendment, Writ Jurisdiction with regard to certain matters had been conferred upon the High Court established under Article 154 P(1) of the Constitution enacted by the 13th amendment to the Constitution when certain conditions are met and satisfied and they may be summarised as follows;

- I. The Writ must be sought against a person exercising power within the Province;
- II. The power so exercised must be under either a law or a Provincial Council Statute; and
- III. The said law or statute must relate to a matter set out in the Provincial Council List.

It is significant to observe at this juncture that the Agrarian Services Act had been repealed in the year 2000 with the introduction of the Agrarian Development Act and the long title to the Agrarian Development Act describes the ambit and or the scope of the of the Act as follows;

“An Act to provide for matters relating to landlords and tenant cultivators of paddy lands; For the utilization of agricultural lands in accordance with agricultural policies; For the establishment of Agrarian Development Councils; To provide for the establishment of a Land Bank; To provide the establishment of Agrarian Tribunals; To provide for the repeal of the Agrarian Services Act, No. 58 of 1979; and For matters connected therewith or incidental thereto.”

Upon a careful reading of the long title to the Act, it becomes manifestly, clear that the Act had been enacted by the Legislature with a view to giving full effect to the provision enumerated in item 9 of the 9th Schedule of the Provincial Council list to the Constitution, namely; “Agriculture and Agrarian Services”, if a purposive interpretation is given as in the Case of **Madduma Banda V. Assistant Commissioner of Agrarian Services and Another 2003 [2] Sri LR 80** wherein it was held that “The word ‘Agrarian’ in item 9 of the 9th Schedule of the Provincial Council list relates to landed property and such property could no doubt, attract paddy lands and tenement cultivators of such land and hence, the impugned order would be covered by the item 9 of the 9th Schedule in the Provincial Councils List. In the case of ambiguity, the enactment should be interpreted so as to give effect to its purpose. The purpose of the 13th Amendment is to give a right to an aggrieved party to have recourse to the Provincial High Court instead of having to seek relief from the Court of Appeal in Colombo. As such the High Court is deemed to have jurisdiction to grant writ sought under Article 154P(4).”.

However, if the particular Act or Statue does not fall or falls outside the subjects enumerated in the Provincial Council list in such a situation the Provincial High Court would not have jurisdiction to entertain writ applications.

It is in this context, let me now, closely, and carefully, examine and analyse section 38 of the Act in its correct perspective.

Section 38 of the Act reads thus;

“

(1) There shall be appointed for the purposes of this Act a Commissioner-General of Agrarian Development. (hereinafter referred to in this Act as

the Commissioner General), and every reference in any other law to the Commissioner of Agrarian Services shall be deemed to be a reference to the Commissioner General.

- (2) There may be appointed an Additional Commissioner General, Commissioners, Deputy Commissioners, Assistant Commissioners, Agrarian Development Officers and other officers as may be necessary for the purposes of this Act.
- (3) The Additional Commissioner-General and Commissioners of Agrarian Development may exercise all or any of the powers of the Commissioner-General under this Act.
- (4) Every Deputy Commissioner may exercise all or any of the powers of the Commissioner-General under this Act, **within the area to which such Deputy Commissioner is appointed.**
- (5) Every Assistant Commissioner may exercise all or any of the powers of the Commissioner-General under this Act, **within the area to which such Assistant Commissioner is appointed.**
- (6) Every Agrarian Development Officer expressly authorized to do so by the Additional Commissioner, the Deputy Commissioner or the Assistant Commissioner within whose area, the area of authority of such Agrarian Development Officer falls, may exercise all or any of the powers of the Commissioner General under this Act, within the area to which such Agrarian Development Officer is appointed.
- (7) The Additional Commissioner General, The Commissioners, the Deputy Commissioner General, every Assistant Commissioner and every Agrarian Development Officer shall in the exercise of his powers and the

performance of his duties under this Act, be subject to the direction and control of the Commissioner-General.” [Emphasis is mine]

Upon a careful analysis of section 38 of the Act in its totality, it becomes abundantly clear that the Legislature in its wisdom had in enacting it in such a manner, explicitly, made a clear distinction between **the exercise of the powers by the Commissioner General of Agrarian Development so conferred upon himself by the Act as well as the exercise of the powers by the Additional Commissioner General of Agrarian Development, and Commissioners of Agrarian Development so conferred upon the Commissioner General of Agrarian Development by the Act** on the one hand, and **the exercise of the powers by the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development so conferred upon the Commissioner General of Agrarian Development by the Act** on the other hand, in that **while, the Commissioner General of Agrarian Development, Additional Deputy Commissioner General of Agrarian Development, and Commissioners of Agrarian Development will exercise the powers so conferred upon the Commissioner General of Agrarian Development by the Act** on an “island-wide” basis in terms of section 38 (1),(2) and (3) of the Act, **the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development will exercise the powers of the Commissioner General of Agrarian Development so conferred upon him by the Act, “only” within the area to which such Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian**

Development has been appointed as enacted in section 38(4) and (5) of the Act.

[Emphasis is mine]

Hence, it becomes manifest upon a careful reading of section 38 of the Act that there are two categories of persons thereunder, insofar as it only, relates to the exercise of the powers conferred upon the Commissioner General of Agrarian Development under the Act, in that;

a) the Commissioner General of Agrarian Development as well as **the Additional Commissioner General of Agrarian Development**, and **Commissioners of Agrarian Development** will exercise the powers conferred upon **the Commissioner General of Agrarian Development** by the Act on an “**island-wide**” basis;

b) whereas, the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development will exercise the powers conferred upon **the Commissioner General of Agrarian Development** by the Act, “**only within the area**” to which such **Deputy Commissioner of Agrarian Development and/or the Assistant Commissioner of Agrarian Development has been appointed** in terms of section 38(4) and (5) of the Act. [Emphasis is mine]

In view of the aforesaid analysis of section 38 of the Act, it becomes manifest that the exercise of powers conferred upon the Commissioner General of Agrarian Development by the Act, is “**two-fold**” in that the powers conferred upon the Commissioner General of Agrarian Development by the Act are on the one hand, exercised by **the Commissioner General of Agrarian Development** as well as

the Additional Commissioner General of Agrarian Development, and Commissioners of Agrarian Development on an “**island-wide**” basis, whereas, the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development will on the other hand, exercise the same powers so conferred upon **the Commissioner General of Agrarian Development** by the Act, “**only within the area**” to which such **Deputy Commissioner of Agrarian Development and/or the Assistant Commissioner of Agrarian Development has been appointed** in terms of section 38(4) and (5) of the Act. [Emphasis is mine]

Therefore, the resultant position is that the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development will exercise their powers **only within the area to which such Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development has been appointed** in terms of section 38(4) and (5) of the Act, and thus, the exercise of power by the **Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development** is circumscribed by the area **to which such Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development has been appointed.** [Emphasis is mine]

Hence, it becomes manifest that section 38(4) and (5), had deliberately, been enacted to the Act by the Legislature in such a manner as enumerated above, solely, in furtherance of the Thirteenth Amendment to the Constitution thus, making the decisions of either the **Deputy Commissioner of Agrarian Development** or **the Assistant Commissioner of Agrarian Development** made

by them in the exercise of the powers of the Commissioner General of Agrarian Development **“only within the area”** to which such **Deputy Commissioner of Agrarian Development** or **the Assistant Commissioner of Agrarian Development** has been appointed, **“amenable” to the writ jurisdiction of the High Court of the Province established by Article 154P(1) of the Constitution and conferred upon it by Article 154P(4) of the Constitution enacted by the Thirteenth Amendment to the Constitution.** [Emphasis is mine]

In the circumstances, it clearly, appears that the requirement No. 1 as enumerated above, namely; **Writ must be sought against a person exercising power within the Province**; has been clearly, fulfilled by the Appellants which is in my opinion, a condition precedent to invoke the writ jurisdiction of the High Court of the Province for; the Assistant Commissioner of Agrarian Development had arrived at the decision sought to be quashed by the Appellants (ඉ12), in the exercise of the powers of the Commissioner General of Agrarian Development **“only within the area”** to which such Assistant Commissioner of Agrarian Development had been appointed, namely; District of Kegalle which comes directly, within the jurisdiction of the High Court of the Sabaragamuwa Province where the instant application for writ had been properly, instituted by the Appellants seeking a kind of relief as enumerated above, against the Respondents. [Emphasis is mine]

Furthermore, in view of the reasons set out above, the requirement No. 2 as enumerated above, namely; **the power so exercised must be under either a law or a Provincial Council Statute**; too, has been clearly, fulfilled by the Appellants which too, is in my opinion, a condition precedent to invoke the writ jurisdiction

of the High Court of the Province for; the power so exercised by the Assistant Commissioner of Agrarian Development had derived from section 83 of the Agrarian Development Act read in conjunction with item 9.2 of the 9th Schedule of the Provincial Council list in particular. [Emphasis is mine]

Moreover, in the light of the reasons enumerated above, the requirement No. 3 as enumerated above, namely; **The said law or statute must relate to a matter set out in the Provincial Council List**; also, has been clearly, fulfilled by the Appellants which is in my opinion, also a condition precedent to invoke the writ jurisdiction of the High Court of the Province for; the matters stated in section 83 of the Agrarian Development Act are matters coming within the ambit of item 9.2 of the 9th Schedule of the Provincial Council list, namely; **Rehabilitation and maintenance of minor irrigation works**. [Emphasis is mine]

I would, therefore, hold that all the requirements necessary to invoke the writ jurisdiction of the High Court of the Province established under Article 154P(1) of the Constitution as enumerated above, had been fulfilled by the Appellant before the High Court of the Province.

As stated above, however, the Respondents had placed heavy reliance on the decision in **Wijesuriya vs Wanigasinghe and Others (Supra)** in support of the jurisdictional objection so raised by them.

It appears however, that the Supreme Court in the decision in **Wijesuriya vs Wanigasinghe and Others (Supra)** had no occasion to consider the distinction between the powers exercisable by the Commissioner General of Agrarian Development by himself and the Additional Commissioner General of Agrarian

Development and the Commissioners of Agrarian Development “**on an island-wide basis**” as enacted by section 38 (1), (2) and (3) of the Act, on the one hand and the powers exercisable by the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development “**only within the area to which they have been appointed**” as enacted by section 38(4) and (5) of the Act, on the other hand. [Emphasis is mine]

On the other hand, the decision-the subject matter of the Appeal in the Supreme Court in the decision in **Wijesuriya vs Wanigasinghe and Others (Supra)** was one directly, made by the Commissioner General of Agrarian Development by himself sitting in appeal, whereas, the decision sought to be quashed by the Appellants in the instant application was not one made by the Commissioner General of Agrarian Development exercising the powers conferred upon him on an island wide basis but, by the Assistant Commissioner of Agrarian Development appointed to exercise the powers of the Commissioner General of Agrarian Development only within the area to which the Assistant Commissioner of Agrarian Development has been appointed, namely; District of Kegalle.

Hence, the facts pertaining to the Supreme Court decision in **Wijesuriya vs Wanigasinghe and Others (Supra)** can clearly, be distinguishable from the facts of the instant appeal and therefore, the Supreme Court decision in **Wijesuriya vs Wanigasinghe and Others (Supra)** has if I may say so with all due respect, no bearing on the resolution of the instant appeal before us.

Furthermore, this Court too, had in its decisions in **CA(PHC)65/2010 (Supra)** and **CA(PHC)122/2011(Supra)** upon which heavy reliance had been placed by the Respondents in support of the jurisdictional objection so raised by them in

the Court below, no occasion to consider the clear distinction between the powers exercisable by the Commissioner General of Agrarian Development by himself and the Additional Commissioner General of Agrarian Development and the Commissioners of Agrarian Development “**on an island-wide basis**” as enacted by section 38 (1), (2) and (3) of the Act, on the one hand and the powers exercisable by the Deputy Commissioner of Agrarian Development and the Assistant Commissioner of Agrarian Development “**only within the area to which they have been appointed**” as enacted by section 38(4) and (5) of the Act, on the other hand.

Hence, I would if I may say so with all due respect, find myself unable to agree with the view so expressed by this Court in those two decisions as enumerated above.

On the other hand, the view so expressed by me as aforesaid, is well, supported and fortified by the decision of the Supreme Court in **Madduma Banda V. Assistant Commissioner of Agrarian Services and Another (Supra)** as well as by the decisions of this Court in **CA/Writ 23/2013-Decided on 10.06.2016** and **CA Writ Application No. 371/2014(Supra)**.

Before I part with the judgement, I would think it pertinent and relevant to deal with a further point which I think, has a bearing on the resolution of the question of law that has arisen before us for our consideration in the instant appeal and it relates to the contradictory and different positions so adverted to by the learned Attorney General in the instant appeal before us as well as in the High Court of the Province on the one hand, and in the case in **CA Writ Application No. 371/2014 (Supra)** on the other hand on the same question of law.

It may now, be examined.

Similar question of law that has arisen for our consideration in the instant appeal, had also, arisen before this Court for its consideration in the case bearing **CA Writ Application No. 371/2014(Supra)** wherein, it was contended by the learned Attorney General before this Court that the impugned order-the subject matter of that case, was made under section 90(1) of the Agrarian Development Ordinance and that matter comes under the Provincial Council List and hence, the High Court of the province has jurisdiction to hear and determine an application for writ filed against a decision of the Assistant Commissioner of Agrarian Development of the District of Kegalle made by him under the provisions of the Act.

However, it is regretful to observe that the learned Attorney General now, seeks in this appeal as well as before the High Court of the Province, to advert to an entirely, contradictory and different position to that of the one so adverted to by him before us in the case in **CA Writ Application No. 371/2014(Supra)** that the High Court of the Province has no jurisdiction to hear and determine the writ application filed by the Appellants against the Respondents before it against the Order (ඉ12), made by the Assistant Commissioner of Agrarian Development under the provisions of the Act in the view of the Thirteenth amendment to the Constitution, and in view of the section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and in view of the decision of the Supreme Court in **Wijesuriya vs Wanigasinghe and Others (Supra)** as well as the unreported decisions of this Court in **CA(PHC)65/2010(Supra)** and **CA(PHC)122/2011(Supra)** which clearly, and unambiguously, shows that the

learned Attorney General has thus, endeavoured to approbate and reprobate on the same matter so arisen before this Court for its consideration in two different instances and it is well settled law that a party cannot in law, be permitted to approbate and reprobate on a similar and identical matter as laid down by the Supreme Court in the decision in **Ranasinghe vs. Premadharma and Others 1985 [1] SLR 63.**

This clearly, and unequivocally, shows that there has been no consistency with regard to the position so adverted to by the learned Attorney General on this same question of law which would by itself, entitle this Court to reject the contradictory and different positions so adverted to by him on the same question of law in the instant appeal.

In view of all the above circumstances, I would hold that the jurisdictional objection so raised by the Respondents before the High Court of the Province as to the maintainability of the writ application filed before it by the Appellants as enumerated above, is not entitled to succeed both in fact and law and as such it ought to have been overruled by the learned High Court Judge of the Province *in limine* as rightly, contended by the learned Counsel for the Appellants.

I would therefore, hold that the High Court of the Province has jurisdiction to hear and determine the application for writ instituted thereat, by the Appellants seeking to quash by way of a writ of *certiorari*, the impugned decision of the Assistant Commissioner of Agrarian Development (☉12).

Hence, I would hold that the Appeal is entitled to succeed both in fact and law.

In the result, I would set aside the HC order.

I would thus, allow the appeal however, without costs.

Hence, I would direct the learned High Court Judge of the Province to hear and determine the instant application for writ on its merits as expeditiously, as possible in accordance with the law.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL