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

In the matter of an application for orders in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application No: 206/2018

M. L. P. Piyasena,
No. 75/2,
Elegoda East,
Mamadala,
Ambalantota. (Deceased)

PETITIONER

J. K. P.Malani
No. 75/2,
Elegoda East,
Mamadala,
Ambalantota.

SUBSTITITUED PETITIONER

-Vs-

1. W. M. M. B. Weerasekara
Commissioner General of Agrarian Development,
No. 42,
Sir Marcus Fernando Mawatha,

P. O. Box 537,
Colombo 07.

2. W. Gunasena
   Assistant Commissioner of Agrarian Development,
   District Office,
   Hambantota.

3. Chaminda Ekanayake
   Assistant Commissioner of Agrarian Development,
   District Agrarian Development Office,
   Hambantota.

4. K. S. A. Sumathipala
   Senior Agrarian Development Officer,
   District Agrarian Development Office,
   Hambantota.

5. Indrani Alahapperuma
   No. 51/B, Pubudu Mawatha,
   1st Lane,
   Mattegoda.

6. Gunapala Alahapperuma
   Beminiyanwila,
   Mamadala.

7. H. M. L. Lalitha Alahapperuma
   No. 42, Kuttigala,
   Padalangala.

8. Jagath Wijegunarathna
   Officer-in-Charge,

Police Station,
Ambalantota.

RESPONDENTS

Before	:	Dhammika Ganepola, J. Damith Thotawaththa, J.
Counsel	:	Shantha Jayawardena for the Petitioner. Rohan Sahabandu, P.C. for the 3rd Respondent. D. Sampath, S.C. for the State.
Argued on	:	11.11.2024
Written Submissions tendered on	:	Petitioner : 20.12.2024 5th & 6th Respondents : 16.12.2024
Decided on	:	28.02.2025

Dhammika Ganepola, J.

The Petitioner in the instant application has been the tenant cultivator of the paddy land called Abaranjge Watta. The landlord of the Petitioner was one Sarath Wickremesinghe. The 5th Respondent had instituted a partition action bearing no. P 3636 before the District Court of Hambantota seeking to partition the land called Julgahawatta. The paddy land which was cultivated by the Petitioner had been shown as a part of the Preliminary Survey Plan of the above partition action. The Petitioner claimed his tenant rights before the Licenced Surveyor who had prepared the Preliminary Plan in the above partition action. The landlord of the

Petitioner, Sarath Wickramasinghe had intervened in the said partition action and had filed his Statement of Claim seeking the exclusion of his paddy land called Abarange Watte from the corpus of the said partition action. However, the trial of the said partition action had been fixed *ex parte* against said Sarath Wickramasinghe as he had defaulted in appearing in the said partition action. Accordingly, a final partition decree dated 03.08.2016 had been entered partitioning the corpus. After the final decree of the partition action had been issued, as the 5th Respondent started to dispute the Petitioner's cultivation rights as the tenant cultivator of the paddy land, the Petitioner by letter dated 27.12.2016 [P16] had requested the Assistant Commissioner of the Agrarian Development to decide as to which owner the Petitioner should pay the relevant rent. Further, the Petitioner had requested him to be permitted to deposit the rent at the Agrarian Development Office until such determination. In response to the said letter, the Petitioner had been informed that he is permitted to deposit the rent at the Agrarian Development Council of Lunama until the landlord is clearly identified[P17]. Thereafter O.I.C. of the Ambalangoda Police Station by his letter dated 27.03.2017 [P18] had directed both the Petitioner and the 5th Respondent to the Assistant Commissioner of the Agrarian Development, Hambantota, moving that the landlord and tenant rights over the land be determined so that the dispute between the parties in respect of the land in dispute could be resolved. Accordingly, the Assistant Commissioner of Agrarian Development by letter dated 07.04.2017 [P19] had fixed the matter for inquiry on 24.04.2017. However, on 24.04.2017, the inquiry had been postponed to 03.05.2017 as the 5th Respondent had been absent from proceedings.

While the matter was pending for inquiry on 03.05.2017, the 5th Respondent, by document marked P24, had requested that she be declared the owner cultivator of the paddy land under Section 90(1) of the Agrarian Development Act and ensure that her cultivation rights are not interfered. A minute has been made on the said document P24 referring the said request also be heard simultaneously along with the inquiry fixed for 03.05. 2017. On 03.05.2017 both the Petitioner and the 5th Respondent had been present, and the inquiry had been postponed to 31.05.2017 enabling the Petitioner to obtain the assistance of an Attorney-at-Law. It is evident from the proceedings before the Agrarian Service Assistant Commissioner marked P25 dated 03.05.2017 that the

Petitioner was referred to as the Respondent and the 5th Respondent was referred to as the Complainant at the said inquiry. When the matter was taken up for inquiry on 31.05.2017, the 5th Respondent had been absent, and the matter had been refixed for inquiry on 27.09.2017. As per the proceedings dated 31.05.2017[P26], the inquiry had been given the reference number HA/4/පරීක්ෂණ/2017/02. Again on 27.09.2017, the inquiry had been postponed to 27.12. 2017 as the 5th Respondent had sought further time to obtain legal assistance [P28].

As the matters remained as such and knowingly the inquiry is fixed for 27.12.2017, the 5th Respondent had submitted another request dated 09.10.2017 [P29] seeking an order under Section 90(1) of the Agrarian Development Act moving that her cultivator rights are not disturbed. Thereafter, the 3rd Respondent had called the Petitioner and the 5th Respondent for an inquiry on 20.10. 2017 by letter marked P30 at the undated request of the 5th Respondent under Section 90(1) of the Agrarian Development Act. However, it is important to note that the said letter P30 also specifies its reference number as "My No. HA/04/පරීක්ෂණ/2017/02" which is the same reference number given to the existing inquiry [P28] before the 3rd Respondent. It is further apparent that the matter had been called for an inquiry on three dates after the date of the letter marked P30. Petitioner claims that knowing the inquiry was already fixed for 27.12.2017 and without anticipating that the Petitioner would be summoned for an inquiry in the meantime, the Petitioner was at his daughter's place receiving medical treatments during such time where the inquiry in issue had been held without notice to the Petitioner. Consequently, the inquiry which had been fixed for 20.10.2017 has been postponed to 02.11.2017 in the absence of the Petitioner [P31] and a letter with an incomplete date i.e. …10.2017 [P31A] has been sent to the Petitioner requiring him to be present at the inquiry on 02.11.2017. Furthermore, it is observed that the letter P31A also bears the above reference number "HA/04/පරීක්ෂණ/2017/02." The Petitioner states that he received the letter P31A only a few dates after 02.11.2017. However, on 02.11.2017 inquiry had been held without the participation of the Petitioner. Thereafter, the 2nd Respondent informed his decision, in terms of Section 90(1) of the Agrarian Development Act to the Petitioner and directed the Petitioner not to interfere with the cultivation rights of the 5th Respondent by the letter dated 21.12.2017

[P33]. The letter P33 also bears the above reference number "HA/04//පරීක්ෂණ/2017/02."

On 27.12.2017, the Petitioner had been present for the inquiry as previously scheduled. However, no inquiry had been held on 27.12.2017 as scheduled. In the circumstances, on the very same date, the Petitioner had submitted a letter [P35] requesting the 2nd Respondent to set aside his decision dated 21.12.2017 [P33] and to proceed with the inquiry which was not concluded and postponed to 27.12.2017 as per Section 91 of the Agrarian Development Act.

On 04.02.2018 [P38], the O.I.C. of the Ambalantota Police Station again directed both the Petitioner and the 5th Respondent to the 2nd Respondent owing to a dispute that had arisen between them. The O.I.C. had noted that there is a previous directive from the 2nd Respondent to the Petitioner not to interfere with the 5th Respondent's cultivation rights on the paddy land known as Julangahawattha, as indicated in letter P33. Additionally, there had been a letter informing the Petitioner to deposit the rent for the paddy land called Ambarangewattha at the Agrarian Development Council of Lunama until the landlord is clearly identified. However, there remains a lack of clarity regarding the property in question.

Following the O.I.C.'s aforesaid communication and pursuant to extensive discussions with the parties, the 2nd Respondent had concluded that no further directions should be given to the Police and that the decision previously made would stand [P40]. Thereafter, on or about 30.04.2018, the officers of the Ambalantota Police arrested the Petitioner alleging that the Petitioner had acted in violation of the order of the 2nd Respondent dated 21.12.2017 and had released the Petitioner on police bail warning the Petitioner not to enter the paddy land belonging to the 5th Respondent. Afterwards, the 5th Respondent came into to possession of the paddy land.

In the instant application, the Petitioner challenges the decision of the 2nd Respondent dated 21.12.2017 [P33] made under Section 90(1) of the Agrarian Development Act preventing the Petitioner from cultivating the paddy land of which he is the tenant cultivator and granting cultivation rights to the 5th Respondent. The Petitioner supports his application *inter alia* on the ground that the 2nd Respondent knowing that the inquiry is fixed for 27.12.2017, has manipulated the proceedings to have a

purported *ex parte* inquiry during the meantime and to evict the Petitioner. The Petitioner further states that the decision of the 2nd Respondent is illegal, arbitrary, unreasonable, irrational, and is in frustration of the Petitioner's legitimate expectations.

After careful perusal of proceedings before the Assistant Commissioner of Agrarian Development, this Court observes that there had been three applications [P16, P24, and P29] made under Section 90(1) of the Agrarian Development Act to determine the rightful landlord of the paddy land in issue. The application (first) made by the Petitioner by letter P16, and the application (second) dated 28.04.2017 [P24] made by the 5th Respondent were taken up for inquiry together on 03.05.2017 [see the annotation made on P24]. Both the Petitioner and the 5th Respondents had been present on that day. However, the inquiry had been postponed to 31.05.2017, in order to facilitate the request of the 5th Respondent seeking time to obtain legal assistance. On that day, the matter had been called for inquiry under "Inquiry No. HA/4//පරීක්ෂණ/2017/02" and the same had been postponed to 27.09.2017 as the 5th Respondent was absent [P26]. On 27.09.2017, yet again the matter had been postponed to 27.12.2017 in the presence of both parties [P28]. As the inquiry was fixed for 27.12.2017 by the Assistant Commissioner in the presence of all parties, the parties and the Assistant Commissioner of Agrarian Development are estopped from denying the knowledge of the fact that the inquiry was fixed for such date.

It is observed that while the above inquiry was pending, the 5th Respondent had made another application [P29] seeking an order under Section 90(1) of the Agrarian Development Act. Under the said application, the 5th Respondent had sought the same relief as she had sought in her earlier application [P24], specifically an order to protect her cultivation rights. The Court observes that on the face of document P29 for an unknown reason said application has been named "urgent." However, the reasons for such urgency have not been specified therein nor has it been substantiated with evidence.

Thereafter, by the letter dated 17.10.2017, [P30] the Petitioner and the 5th Respondent had been noticed to appear on 20.10.2017 for inquiry. When the matter was taken up on 20.10.2017, it had been fixed to be called again on 02.11.2017 as the Petitioner was absent [P31]. On

02.11.2017, the inquiry had been held *ex parte* against the Petitioner, as the Petitioner had been absent on the said date as well. The proceedings [P32] provide that the notice served on the Petitioner by the Registered Post was not returned. However, the Respondents have failed to substantiate their position with proof of dispatch of the notice on the Petitioner to the satisfaction of the Court.

The decision to entertain another identical application while one inquiry was pending for the same purpose is questionable. It appears that if there had been any genuine necessity or urgency, the 5th Respondent would have taken steps to expedite the inquiry which was already fixed for inquiry. It is important to note that the time limit between the date of the inquiry held (02.11.2017) and the date of the inquiry to be held (27.12.2017) is also not so extensive.

The Court observes that the second inquiry which was initiated based on application P29 made by the 5th Respondent has also been given the same reference number i.e. HA/4/පරීක්ෂණ/2017/02 which was given to the previous (pending) inquiry which was due to be taken up on 27.12.2017.[see documents marked P30, P31A and P33]. Such action specifically shows knowledge of the Assistant Commissioner of the existing inquiry scheduled to be on 27.12.2017. Aforesaid conduct of the inquiring officer shows the improper procedure adopted by the inquiring officers with regard to the impugned inquiry.

I am taken by surprise by the failure to disclose or take into consideration the fact that there is a pending inquiry to be held on 27.12.2017 by the Assistant Commissioner before making any order at the second inquiry. If such a fact had been taken into account, no reasonable or sensible person would have decided to hold an inquiry in advance without justifying such a decision to hold the inquiry in advance. No reason whatsoever was given in order to justify the actions of the said Respondents to expedite the inquiry while another inquiry was pending in respect of the same matter.

As the Petitioner was aware that the initial inquiry was scheduled for 27.12.2017, he had a legitimate expectation to proceed with such inquiry as scheduled. It is observed that the Petitioner had been deprived of such opportunity to be heard as the matter had been concluded in advance by an order dated 21.12.2017 marked P33 without the knowledge of the Petitioner. The application [P35] to set aside the order dated 21.12.2017

and to proceed with the original inquiry had also been turned down by the Assistant Commissioner [P40].

In the given circumstances and owing to the above-mentioned reasons, I am of the view that holding of inquiry *ex parte* against the Petitioner without duly informing him of the inquiry while another inquiry was pending is unreasonable and a violation of the legitimate expectations of the Petitioner.

The 1st to 4th Respondents state that they cannot come to any decision which is inconsistent with the decree entered into in the partition action bearing no. P3636 before the District Court of Hambantota. It is further stated that the identification of the paddy land in issue is also a dispute which cannot be resolved by way of a writ application. The Respondents are relying on the correctness of the partition decree in the aforesaid matter. Nevertheless, the Petitioner submits that as per the provisions of the Agrarian Development Act, the partition decree does not result in extinguishing the rights of a tenant cultivator. However, the instant application being a judicial review application, this Court is not concerned about the merits of the case. When subjecting some administrative act or order to judicial review, the Court is only concerned with its legality and whether such decision has been arrived at adhering to due process while exercising the powers vested upon the authority making such decision.

As ***Lord Brightman*** stated in the ***House of Lords in Chief Constable of North Wales Police v Evans ([1982] 1 WLR 1155 at 1174*** applications for judicial review are often misconceived:

> *"Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power….. Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."*

In ***Public Interest Law Foundation vs. Central Environment Authority and another (2001) 3 Sri. L.R. 330 (at p. 334) Gunawardena J.*** referring to the above *Chief Constable of North Wales Police vs. Evans case* has held;

"Under judicial review procedure, the Court of Appeal is not concerned with the merits of the case, that is, whether the decision was right or wrong but whether the decision is lawful or not.''

The 5th and the 6th Respondents state that the Petitioner has failed to make Sarath Wickramasinghe (landlord of the Petitioner) a party to the instant application as he is a necessary party to the application. However, it is observed that the Petitioner is not challenging the decree of the partition action bearing no.3636/P before the District Court of Hambanthota. Although Sarath Wickramasinghe said he was a party to the said partition action, he had not been a party to the inquiry before the Assistant Commissioner. In the instant application, the Petitioner is seeking to challenge the orders made by the 2nd Respondent. Hence, the stance taken up by the Respondent that all the necessary parties have not been made parties cannot stand.

Further, the 5th and the 6th Respondents have taken up an objection by their Written Submissions that the impugned decision P33 being made by the Provincial Commissioner instant application would come under the jurisdiction of the High Court of the Provinces. It is claimed that only the orders made by the Commissioner General attract the jurisdiction of the Court of Appeal. Anyhow I take the view that this Court has the jurisdiction to hear and determine this application. I am influenced by the well-considered decision of this Court in the case of, ***Senaka Sebidra Lewis v. D.G.Ajith Priyantha and others CA/Writ/368/2021 decided on 14.09.2022***. In the aforesaid case, the Court came to the following finding;

" Therefore, in line with the precedent laid down by the aforesaid judgments, I take the view that it is settled law that the writ jurisdiction vested in the Court of Appeal under Articles 140 and 141 of the Constitution has not been partially taken away by the 17th Amendment to the Constitution in respect of the matters set out in the Provincial Council list of the Ninth Schedule of the Constitution. Moreover, the High Court of the province has the concurrent writ jurisdiction in respect of the matters set out in the said Provincial Council list."

In the case of ***Kalu Arachchige Allen Nona v. Sunil Weerasinghe, Commissioner of Agrarian Development and others CA/Writ/23/2013 decided on 10.06.2016,*** the Court of Appeal also decided as follows*;*

> *"… Under these circumstances it is understood that with regard to the applications come within Article 154P(4) of the Constitution, Provincial High Courts are conferred with concurrent jurisdiction with the Court of Appeal"*

Hence, I reject the objection on the jurisdiction of this Court to hear and determine the instant application raised by the 5th and the 6th Respondents and hold that this Court has jurisdiction to hear and determine the instant application.

Under the given circumstances and owing to the reasons given above, I am inclined to issue a Writ of Certiorari quashing the decisions of the 2nd Respondent contained in documents marked P33 and P40 and a Writ of Mandamus directing the 1st to 4th Respondents to hold a fresh inquiry under Section 90 of the Agrarian Development Act and make a appropriate order in respect of the cultivation rights of the Petitioner and the 5th Respondents giving fair hearing to both parties. Further the 1st to 4th and 8th Respondents are directed to permit the Petitioner to cultivate the impugned paddy land until such time. I order no cost. Accordingly, the application is allowed.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal