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 Writs of Certiorari, Prohibition 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: 0237/2017

Vidana Gamachchige Misy,
Godaindurukuna, Palatuwa.

Petitioner

- **Vs -**

1. W.H.D. Shamali,
   Assistant Commissioner of Agrarian Development,
   Agrarian Development District Office,
   Nupe, Matara.

   S.M.P.S. Niroshani
   Deputy Commissioner of Agrarian Development,
   Agrarian Development District Office,
   Nupe, Matara.

Substituted 1st Respondent

2. K.L. Vidanacchi,
   Agrarian Development Officer,
   Agrarian Service Centre,
   Mada Uyangoda, Yatiyana

M.K. Chamila Sandamali,
Agrarian Development Officer,
Agrarian Service Centre,
Mada Uyangoda, Yatiyana.

Substituted 2nd Respondent

3. Bulegod Aracchige Seetha,
No. 1/75, Weerasinghe Building
Mahawela Road, Dikwella.

4. Land Reform Commission,
82C, Gregory's Avenue,
Colombo 07.

Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Rohan Sahabandu, P.C. with S. Senanayake
For the Petitioner

Navodi De Zoysa, S.C.
For the 01st and 02nd Respondents

Manohara De Silva, P.C. with
Hirosha Munasinghe S. Kariyawasam
For the 03rd Respondent

Vijaya Gamage

For the 04th Respondent

Argued on : 10.07.2024

Decided on : 29.08.2024

R. Gurusinghe J.

The petitioner filed this application on 17-07-2017, seeking *inter alia* Writ of Certiorari quashing the decisions of 1st respondent (Assistant Commissioner of Agrarian Development) and 2nd respondent (Agrarian Development Officer) made on 01-03-2012 marked P11, 02-03-2012 marked P12 (i), 16-03-2012 marked P12 (ii).

The 1st and 2nd respondents filed objections to the petitioner's application together. The 3rd respondent (Bulegod Arachchige Seetha) and the 4th respondent (Land Reform Commission) filed their objections separately.

The petitioner states that the paddy land called Vidana Addara was cultivated by her father and the petitioner became *Ande* cultivator of the said paddy land after the demise of her father. The paddy land called Thotupola Gawa Kelle was cultivated by her husband and the petitioner became *Ande* cultivator of the said paddy land after the demise of her husband.

The 3rd respondent's position is that she is the owner of the abovementioned two paddy lands, which were cultivated by the petitioner as *Ande* cultivator. The 3rd respondent informed the petitioner that she had intended to sell these two paddy lands, and in terms of the provisions of section 2 of the Agrarian Development Act No. 46 of 2000 (hereinafter referred to as the Act), she offered it to the petitioner (the *Ande* cultivator). Then the petitioner

wrote to the 3rd respondent by her letter dated 08-12-2004, in terms of the provisions of section 2(2), that the petitioner was willing to buy the said paddy lands named Thotupola Gawa Kelle in extent of 1 rood and 10 perch for Rs. 17,500.00, instead of Rs. 20,000/- as offered by the 3rd respondent. A copy of that letter is produced marked 1R1 ඇ, (3R1 ඇ), by the 3rd respondent. The petitioner also wrote to the 3rd respondent by letter dated 08-12-2004 in terms of section 2 (2) of the Act, that she was willing to buy the paddy land named Vidana Addara in extent of 1 acre 3 roods and 30 perches, for Rs. 93,000/- , instead of Rs. 124,000/- which was the price quoted by the 3rd respondent. A copy of that letter is produced marked 1R1ඇ, (3R1 ඇ), by the 3rd respondent.

Since the petitioner and the 3rd respondent did not agree on the prices, there had been an inquiry under section 2 (3) (a) (b) of the Act, and the prices were fixed at Rs. 19,000/- and Rs. 110,000/- for Thotupola Gawa Kelle and Vidana Addara respectively by the Agrarian Development Council. The petitioner was informed by the said Council to buy those two paddy lands for the above-fixed prices on or before 30-06-2006. However, the petitioner failed to buy the said paddy lands. The petitioner, by letter dated 07-07-2006, informed the Deputy Commissioner of Agrarian Development Matara that two paddy lands referred to above were owned by the Land Reform Commission and, therefore, she was not in a position to buy the said lands from the 3rd respondent, stating that the 3rd respondent was not the owner, but only a third party.

Thereafter, there had been an inquiry before the Agrarian Services Commissioner, and the Commissioner decided that the petitioner (the tenant cultivator) had violated the provisions of Section 2 (3) (b) and, therefore, decided by the order dated 01-03-2012, to evict the petitioner from the two lands referred to above under the provisions of Section 2 (4) of the Act.

The Assistant Commissioner informed the petitioner of the above decision by a letter dated 02-03-2012, which was marked P12 (1). The Commissioner made a correction to the two schedules and sent the letter dated 16-03-2012 to the petitioner informing the same.

The petitioner states that being aggrieved by the said decision of the Commissioner, she filed an application for a Writ of Certiorari to the High Court of Matara. This application was, however, rejected by the Learned High Court Judge on the ground that the Provincial High Courts did not have jurisdiction over the decisions of the Agrarian Development Commissioner. Subsequently, the petitioner filed the instant application to this court.

All four respondents have filed objections, including preliminary objections to the petitioner's application, and moved for a dismissal of the petitioner's application.

The petitioner is seeking to quash the decisions of the 1st and 2nd respondents made on 01.03.2012 marked P11, decision dated 02.03.2012 marked P12 (I), and 16.03.2012 marked P12 (II) and decision contained in P13 dated 30.04.2012. This application before this court was filed on 17.07.2017.

The explanation of the petitioner for the delay is that she had filed an application before the Provincial High Court Matara, and that application was rejected by the High Court on the basis that the High Court of the Provinces has no jurisdiction to look into the issue in suit.

The 3rd respondent pointed out that the petitioner has suppressed the Magistrates' Court proceedings of Matara bearing no. 67017, instituted by the 1st respondent against the petitioner under S.8(1) of the Act for eviction of the petitioner from the paddy lands in issue.

It was argued that under S. 2 of the Act, the owner of the paddy field is the only party eligible to make an application or complaint to the Commissioner. The petitioner contends that the Land Reform Commission (hereinafter sometimes referred to as the LRC) is the owner of the paddy lands in issue, and therefore, the Commissioner's decision (P11) is *ultra vires*. If the petitioner's position was that the Land Reform Commission was the owner of the paddy lands, she would have raised this issue prior to the commencement of the proceedings outlined in S.2 of the Act. Instead, the petitioner only raised this issue after agreeing to the price fixed by the Agrarian Development Council. Allowing the tenant cultivator to challenge the ownership of the land after agreeing to the price fixed by the Council, particularly at the final stage of the statutory proceedings, would render such proceedings ineffective and of no consequence. On the other hand, the petitioner's position was not substantiated. In the circumstances, the new position taken up by the petitioner is merely an effort to oust the jurisdiction of the Commissioner.

The documents produced as P1 and P1(a) copies of the Agricultural Lands Register, which contains the petitioner's name as tenant cultivator and the 3rd respondent's name as the landlord and the owner of two paddy lands in issue.

Section 53(6) of the Agrarian Development Act states as follows:
An entry in a register prepared or amended under the provisions of this section and which is for the time being in force shall be admissible in evidence and, shall be prime facie proof of the facts stated therein.

The petitioner has also produced copies of the amended Agricultural Lands Register as P2 and P3, removing the name of the landlord and the owner of the two paddy lands in issue. However, such an amendment was effected long after the impugned decisions, on 01-09-2019. The petitioner has not explained how that amendment was effected to the above-mentioned documents. Furthermore, if the position of the petitioner is that the 4th

respondent the Land Reform Commission, is the owner of the two paddy lands in question, in the above amendments, the Land Reform Commission should have been named as the landlord and the owner of the paddy lands in issue. Although the petitioner claimed that the paddy lands in issue were vested in the Land Reform Commission, the petitioner failed to state who the owners of the lands were before they were vested in the Commission. Furthermore, by document 3R4, the Land Reform Commission informed the Agrarian Development Council that Vidana Addara Kumbura, which had been vested in the Land Reform Commission, was owned by the late William Wijekoon and the petitioner was not the *Ande* cultivator under the Land Reform Commission. The 3rd respondent pointed out that Vidana Addara Kumbura is a large paddy field which consists of several lots owned by different owners and cultivated by different cultivators. This fact is evident from P1, P1A, P2A, and P5.

The 3rd respondent produced documents marked 1R1(අ), and 1R1(ඇ), dated 08-12-2004 sent to the 3rd respondent by the petitioner, where the petitioner stated her willingness to buy two paddy lands in issue from the 3rd respondent, under the provisions of Section 2 (2) of the Act. The 3rd respondent has also produced a letter sent to her by the petitioner dated 21-08-2000 marked 1R2, where the petitioner stated that the two paddy lands in issue were earlier cultivated by her husband, K. A. Darilis. She also informed the 3rd respondent that as her husband was now deceased, the paddy lands were cultivated by the petitioner. Further, the petitioner had informed the 3rd respondent that she was willing to buy those two paddy lands for a price assessed by the Agrarian Services Committee. If the petitioner had paid *"praveniya"(rent)* to LRC during the period between 2000 and 2004, the petitioner would not have agreed to buy the paddy lands from the 3rd respondent by the above-mentioned letters marked1R1(අ) and 1R1 (ඇ) dated 08.12.2004

Documents P1 and P1 (A) show that the petitioner was the *Ande* cultivator, and the 3rd respondent was the landlord and owner of the two paddy lands in question. The documents marked 1R1 (අ), 1R1 (ඇ), and 1R2 clearly manifest that the petitioner had admitted that the 3rd respondent was the owner of the two paddy lands in question. The petitioner did not raise any issue regarding the 3rd respondent's title to the paddy lands in question. The documents also show that the only issue between the petitioner and the 3rd respondent at that time was the selling prices of the two paddy lands.

The Agrarian Development Council determined the selling price and informed the same to the petitioner by P7 (1) and P7 (2). By the time when P7 (1) and P7 (2) were issued to the petitioner by the Agrarian Development Officer on 22-05-2006, there was no issue regarding the ownership of the paddy land.

The Agricultural Committee asked the petitioner to buy the two paddy lands for the prices set up by it on or before 06-06-2006. Upon the price being fixed, the petitioner should have purchased the paddy lands in issue. However, the petitioner failed to abide by the decision of the Agrarian Development Council. Since the petitioner failed to buy the two paddy lands, the 3rd respondent again complained to the Agrarian Development Commissioner. As a result, an inquiry was made under S.2 (4) of the Act to determine whether the petitioner should be evicted from the two paddy lands due to her failure to comply with the decisions outlined in P7(1) and P7(2). In response, the petitioner came up with a new position asserting that the paddy lands in question were owned by the Land Reform Commission, and not by the 3rd respondent. However, the Commissioner has observed that neither the petitioner nor the Land Reform Commission produced any documents to show that the two paddy lands in question had been vested in the Land Reform Commission. The document marked P4 only refers to areas up to 1990 *Yala* for Thotupola Gawa Kelle paddy land. The boundaries or the extent of such lands cannot be ascertained by P4.

The petitioner did not produce any acceptable evidence to show that the Land Reform Commission was the owner of the two paddy lands in issue.
The commissioner has no reason to believe that there was a real dispute regarding ownership. Even the LRC had not produced any documents to the effect that it was the owner of two paddy lands in issue. Therefore, the order of the Commissioner of Agrarian Development is well within the law. We see no reason to grant the reliefs sought by the petitioner. The application of the petitioner is therefore, dismissed.

Judge of the Court of Appeal

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal