

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

In the matter of an Application under
and in terms of Article 140 of the
Constitution for mandates in the
nature of Writs of *Certiorari*
Prohibition and Mandamus.

C.A.(Writ)Application No. 374/2015

Moramudali Arachchilage Gayani
Polgampalage (nee Piyadasa),
No.31, Kavinda Place, Kirulapone,
Colombo 06, and presently residing
at No.87, Lagoon Crescent,
Bellbowrie, Queensland 4070,
Australia.

Appearing by her lawfully appointed
Attorney, Moramudali Arachchilage
Piyadasa of 'Gayani', Dolahena,
Kalawana.

Petitioner

Vs.

01. W.M.M.B. Weerasekara,
Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No.42, Sir Marcus Fernando
Mawatha,
Colombo 07.

02. J.D.N.S. Jayakody,
Assistant Commissioner of Agrarian
Development,
Department of Agrarian
Development,
Development District Office ,
Ratnapura New Town,
Ratnapura.
03. B.V. Janaka Indrajith Kumarasiri,
Agrarian Development Officer,
Agrarian Services Centre,
Kalawana.
04. N.Karunaratne, **(Deceased)**
Hangarangala,
Kalawana.

Respondents

- 04A. Polwatta Gallage Chandrika
Hemanthi
Hangarangala,
Kalawana.
- 04B. Rasika Sanjeeewani Karunarane,
Hangarangala,
Kalawana.
- 04C. Nilusiya Damayanthi Karunaratne,
Hangarangala,
Kalawana.

Substituted-Respondents.

BEFORE : ACHALA WENGAPPULI, J.

COUNSEL : Lasitha Kanuwanaarachchi with Michale Jaasinghe for the Petitioner.
H. Withanachchi with Shantha Karunadhabra for the 4th Respondent
Chaya Sri Nammuni S.S.C. for the 1st 2nd and 3rd Respondents.

ARGUED ON : 28.11.2019 & 10.02.2020

DECIDED ON : 30.09.2020

ACHALA WENGAPPULI, J.

The Petitioner, in this application filed through her lawfully appointed Attorney, had invoked the jurisdiction conferred on this Court by Article 140 of the Constitution seeking issuance of Writs of *Certiorari*, *Prohibition* and *Mandamus* challenging certain decisions and orders made by the 1st to 3rd Respondents, acting under the provisions of Agrarian Services Act No. 59 of 1979 and Agrarian Development Act No. 46 of 2000, in respect of a paddy land known as *Mahamerige Watta Meda Kella Kumbura*, of which she owns and possesses a 2- acre plot, upon her 1/14th share entitlement.

In seeking a Writ of *Certiorari*, the Petitioner intends to quash several decisions made by the 1st and 2nd Respondents, marked as P8, P14(a), P14(b), P21, P27, P28(a), and P28(b), by which the said Respondents have recognised the 4th Respondent as the landlord of the said 2-acre portion of

paddy land and one *Mendis Singho* and upon his death his wife *W.P. Ranmenike* as its Tenant Cultivator.

The Writ of *Prohibition* was sought by the Petitioner, in order to restrain the said Respondents from implementation of any order or judgment of "any Magistrate's Court pertaining to the handing over" of the said undivided plot of paddy land and/or "ejection/eviction of the said *W.P. Ranmenike* therefrom" until the final determination of the partition action pending before the District Court of *Ratnapura* in case No. 115/P. She also seeks a Writ of *Prohibition* preventing making any further orders pertaining to the ownership or arrears payment of ground share in respect of the said undivided share of paddy land, until the final determination of the said partition action, in addition to seeking the prevention of implementing the order P8 against her and her immediate predecessor.

The Writ of *Mandamus* was sought by the Petitioner to compel the 1st and 2nd Respondents to discontinue any further legal proceedings instituted in the Magistrate's Court under Section 8 of the Agrarian Development Act No. 56 of 2000, and to withdraw such proceedings and also from taking any action to hand over possession of the said land to the 4th Respondent.

The 1st to 3rd Respondents and the 4th Respondent have in their respective statement of objections resisted the application of the Petitioner.

Describing the factual basis on which the Petitioner has sought the above reliefs, it is stated that her father had acquired 1/14th share of the paddy land called *Mahamerige Watta Meda Kella Kumbura* upon a deed of transfer No. 15827 of 14.03.1990 from one *Yasawardhane Bandara*, before

making a gift in her favour on 09.11.2007 by deed of gift No. 979. She also states that the 4th Respondent too had acquired a 1/14th share of the said paddy land. In relation to the paddy land called *Mahamerige Watta Meda Kella Kumbura*, survey plan No. 1406 (P2(b)) was prepared upon institution of the partition action No. 115/P in 1972. The said preliminary plan indicates that the total extent of the said paddy land is over 29 acres, inclusive of 20 lots, as shown by the parties to the said action.

It is stated that when the Petitioner's father had acquired rights over the said undivided 1/14th share over a 2-acre portion of land from lot No. 19, one Y. A. Mendis Singho was already recognised as its tenant cultivator, who continued to function as the registered tenant cultivator under him, until the said cultivator's death in December 2000. Since the surviving members of the said tenant cultivator's family did not wish to continue as the tenant cultivators, it is claimed by the Petitioner that her father, either by himself or through his servants, had cultivated and possessed the 2-acre paddy land from year 2000.

The rights over the other 1/14th share of the said portion of paddy land, which had devolved from one H. A. Surabiel Appuhamy, is claimed several other parties but the Petitioner was emphatic that her father had continued to possess "*a clearly identified/demarcated 02 Acre extent of said land*" as after death of Y. A. Mendis Singho, and no person was appointed as his successor in relation to the said portion.

The Petitioner claims that the 4th Respondent "*is also claiming ownership to the said same 2 Acre extent of undivided land*" that her father had cultivated after his acquisition of 1/14th undivided share. In the said

partition action, her father is named as the 54th Defendant, while the 4th Respondent is named as the 56th Defendant.

The dispute in relation to this application is over the validity of the conferment of the status of tenant cultivatorship over the said 2 Acre paddy land of lot No. 19 to *W.P. Ranmenike*, the wife of the deceased tenant cultivator *Y.A. Mendis Singho*, under the 4th Respondent's ownership and its consequential outcome, upon application of the statutory provisions of Agrarian Development Act No. 46 of 2000 by the 1st to 3rd Respondent.

According to the Petitioner, the several decisions and orders made by the 1st to 3rd Respondents, the validity of which are challenged in this application, were made upon a complaint by the 4th Respondent to the District Office of the Agrarian Services in March 1991, that the said tenant cultivator was in arrears of rent due upon his undivided 1/14th share, on the same 2 Acre paddy land, at that point of time, possessed by the Petitioner's father.

It is claimed by the Petitioner, that her father was not afforded an opportunity to participate in the inquiry held consequent upon the said complaint of the 4th Respondent of arrears of rent. The said inquiry report is dated 31.10.1995 and is marked as P8.

At the inquiry the tenant cultivator, *Y.A. Mendis Singho*, admitted his status as the tenant cultivator of the disputed paddy land, not under the 4th Respondent as his landlord, but under the Petitioner's father. The inquiring officer nonetheless concluded that *Mendis Singho* was in fact the tenant cultivator of the 4th Respondent and since he was in arrears of rent, ordered to pay Rs.1550.00 to the 4th Respondent under Section 18(1), as

arrears of rent for the *Maha* season of 1990/1991. The Petitioner, seeks issuance of Writ of *Certiorari* to quash the said decision P8. She also challenges the validity of the decisions taken by the Respondent as reflected in P14(a) and P14(b).

The document P14(a) (mistakenly marked only as "P14" in the relevant document annexed to the Petition) is a letter addressed to *W.P. Ranmenike*, the wife of the deceased tenant cultivator *Mendis Singho*, through which the 2nd Respondent, conveyed that, in view of the fact that her late husband had left arrears of rent in favour of the 4th Respondent, and that she and her son had continued to cultivate his land but failed to pay rent, directed her to pay Rs.152,735.00 as arrears of rent for *Maha* seasons 1990/1991 to 2013/2014. It is also conveyed that the failure to pay arrears of rent as directed would result in terminating her tenancy over the said land, under Section 10(2) of the Agrarian Development Act No. 46 of 2000.

Letter P14(b) also addressed to *Ranmenike*, by which the 2nd Respondent informs that her tenant cultivatorship over the disputed paddy land is terminated upon her failure to pay arrears of rent to the 4th Respondent and directs her, under Section 10(3) of the Agrarian Development Act No. 46 of 2000, to vacate from the said paddy land.

With the intervention of the Petitioner's father, representations were made over the decisions and orders received by *Ranmenike*, resulted in the issuance of the letter P21 by the 1st Respondent, who had in effect nullified the arrears of rent accumulated from *Maha* season of 1991/1992 up to *Maha* season 2013/2014 in view of the fact that the Act No. 46 of 2000 is

silent on succession of tenancy, but affirmed her status as the tenant cultivator of the 4th Respondent over the disputed portion of paddy land by adopting the findings of the inquiry P8.

Since *Ranmenike* did not pay arrears of rent, as determined by the inquiry P8, the 2nd Respondent had thereafter issued P27, directing her to comply within 30 days of its receipt.

Letter P28(a), issued by the 2nd Respondent, informed *Ranmenike* of the termination of her tenancy over the disputed paddy land, upon her failure to pay arrears of rent and it also directed her to vacate therefrom and handover its possession to the 4th Respondent. It also indicated that her failure to comply with the said direction would result in her eviction through the fiscal of Court. With P28(b), the 2nd Respondent made order that the tenancy of *Ranmenike* is terminated and she is ordered under Section 10(3) of the Act to vacate and handover possession to the 4th Respondent and her failure to comply would warrant eviction through the Court Fiscal.

At the hearing of this application, learned Counsel for the Petitioner submitted that the initial inquiry findings, upon which most of the subsequent decisions and orders made by the 1st to 3rd Respondents are based on, is illegal, *ultra vires*, unlawful, misconceived, erroneous, wrongful, irrational, arbitrary, unreasonable, unfair, contrary to the principles of natural justice and legitimate expectations entertained by the Petitioner, for the following reasons;

- a. the ownership of the disputed paddy land and its landlord should only be decided by a competent Court,

- b. even if the 4th Respondent is entitled to his half share from the disputed paddy land, he is only entitled to a land in extent of one acre from the 2-acre land,
- c. since the Petitioner's father's name appears in the relevant Paddy Land Register as the landlord/owner of the said paddy land, the same is *prima facie* proof of ownership,
- d. no devolution of late *Mendis Singho*'s tenancy rights over to his wife or son since the Act No. 46 of 2000 did not contain any provision pertaining to such devolution of the rights of a deceased tenant,
- e. since *Ranmenike* declined to continue her late husband's tenancy, the attempt to compel her to pay arrears of rent is totally misconceived,
- f. the Petitioner's father had cultivated the said paddy land since year 2000, but no notice was served on him to handover possession,
- g. any inquiry into the dispute between the heirs of *Mendis Singho* and the 4th Respondent is not contemplated by the applicable laws,
- h. the Respondents have acted contrary to the undertaking of the 2nd Respondent that no action will be taken in relation to the land rights of the Petitioner.

It appears from the above grounds that are relied upon by the Petitioner, the focus of the challenge mounted by the Petitioner is primarily on the inquiry report P8, by which the tenancy of *Mendis Singho* and arrears of rent in favour of the 4th Respondent were recognised. In

making the decisions and orders in P21, P27, P28(a) and P28(b) that are sought to be quashed, the 1st to 3rd Respondents have acted on the said determination on tenancy and arrears of rent as per P8. Even in P14(a) and P14(b), the 1st to 3rd Respondents have made their decisions and orders based on the findings of P8. Hence, the validity of P8 determination will undoubtedly have a bearing over the validity of all these determinations and orders that are reflected in P14(a), P14(b), P21, P28(a) and P28(b) because all the subsequent decisions and orders are made on the basis that by P8, the inquiring officer had correctly identified the landlord/tenant cultivator relationship between the parties and determined arrears of rent.

The findings of the inquiring officer in P8 were made on 31.10.1995. The applicable statutory provisions at that point of time could be found in Section 18(1) of the Agrarian Services Act No. 58 of 1979, which empowered the Commissioner to inquire into a complaint of arrears of rent due to a landlord from his tenant cultivator and if the Commissioner is "satisfied" that the arrears of rent are not being paid, the tenancy of the defaulting tenant cultivator could be terminated after notice.

The Section 18(1) states;

"When the landlord informs the Commissioner that the tenant cultivator is in arrear of rent in respect of an extent of paddy land the Commissioner shall on being satisfied that the arrears of rent are not being paid, give notice in writing to the tenant cultivator that his tenancy in respect of such extent would be terminated if he fails to pay such arrears within the time specified in such notice"

The plain meaning of the section indicate that the Commissioner must first "satisfied" that "*the arrears of rent are not being paid*" for him to proceed to take action prescribed in the section on the defaulting tenant cultivator.

It is relevant to note that the word "satisfied", as found in Section 18(1), in relation to Public Law considerations, was defined in **Walter Leo v The Land Commissioner** 57 NLR 178, by the then Supreme Court, in the light of reasoning in *Liversidge's case* (1942) A.C. 206, quoting Lord Wright. The Court stated;

"... if a person must be " satisfied " on any point (even for the purposes of an administrative decision) the word at least means " reasonably satisfied ", and " cannot import an arbitrary or irrational state of being satisfied. " A fortiori, if an inferior tribunal making a judicial decision has to be " satisfied " that a certain state of facts exists before adopting a permitted course of action, that state of facts must in fact exist. The objective test is especially necessary in a context where a public officer (not required to possess a legal training) purports to give a decision which, through misdirection, would defeat the intention of the legislature by extending the categories of private property liable to compulsory acquisition."

Thus, the Commissioner, in satisfying that "*the arrears of rent are not being paid*" he must first consider whether "*a certain state of facts exists before adopting a permitted course of action, that state of facts must in fact exist*". How this is achieved is described in the judgment of **Wickremasuriya v**

Dedoleena & Others (1996) 2 Sri L.R. 95, where, in relation to an appeal preferred against the decision of the Assistant Commissioner of Agrarian Services, Jayasuriya J held;

"I hold that the Assistant Commissioner had indulged in a proper and adequate analysis and evaluation of the respective evidence placed before him. This court is unable to say that the Assistant Commissioner (Inquiries) had arrived at an improper evaluation of the evidence placed before him. Arriving at determinations with regard to credibility and testimonial trustworthiness of a witness is a question of fact and not a question of law. I hold that there is no misdirection in point of fact or in point of law, nor any defective procedure discernible from a perusal of both the oral and documentary evidence and the order pronounced by the Assistant Commissioner. In the circumstances, I hold that the Assistant Commissioner (Inquiries) has arrived at strong and tenable findings of fact and in the result, this court has no jurisdiction or power to interfere with the finding of fact of the Assistant Commissioner and no error of law or issue of law arises for consideration upon this appeal."

In view of the reasoning contained in the above cited judgments, if the conclusion in P8 is reached after proper evaluation of the evidence that had been presented before the inquirer and thereupon determining "*that a certain state of facts exists*", then this Court need not interfere with such a determination on a question of fact made by the 1st to 3rd Respondents.

However, as per the contention advanced by the Petitioner, the question before this Court for its determination is whether the conclusions reached and acted upon by the 1st to 3rd Respondents, that *Mendis Singho* is in fact the tenant cultivator of the 4th Respondent and “*the arrears of rent are not being paid*”, are made after proper evaluation of available evidence?

The Petitioner cited the judgment of *Herath v Peter* (1989) 2 Sri L.R. 325, where this Court held, in relation to a dispute between a land lord and tenant cultivator over their rights upon a paddy land that;

“Any dispute in respect of a paddy-field arising between a landlord and a tenant, as defined by the provisions of the said Act, and in relation to which express provision is made therein will be regulated by the provisions so contained in the said Act; and any such dispute would have to be determined in the manner set out in the said Act. Such dispute cannot be brought before and sought to be determined by a court of law.

This principle will apply only if the dispute, which arises in respect of a paddy-field, is a dispute between a person, who is a landlord within the meaning of the said law, and a person, who is a tenant-cultivator within the meaning of the self-same Act. The two parties to the dispute should each bear the character which the Act requires that each should in fact and in law bear and possess, in order to enable one to enforce the rights the Act gives him against the other, and to subject the other to perform the obligations which the

Act compels him to perform. If one or the other does not in fact and in law possess the character each is so required to have and possess, then the provisions of this law cannot be availed of by one, and be imposed against the other."

In *Sawsiriya v Pema* 79(I) NLR 332, when a tenant cultivator sought relief against his eviction, the then Supreme Court was of the view that;

"An Agricultural Tribunal to whom an application has been made under section 2(3) by a person claiming to be a tenant-cultivator has to decide the preliminary question whether, at the time of the alleged eviction, the applicant was a tenant-cultivator within the meaning of the provisions of the Lands Law, before proceeding to decide the question whether that person has been evicted. If, on the evidence placed before it, the Tribunal comes to the conclusion that the applicant has ceased to be a cultivator within the meaning of section 54."

The inquiry report P8 was a result of a complaint of arrears of rent by the 4th Respondent by his tenant cultivator. In applying the principles laid down by the judgments of *Herath v Peter* (supra) and *Sawsiriya v Pema* (supra), in an inquiry into the complaint by the 4th Respondent of arrears of rent, the inquirer must first decide whether the 4th Respondent is the landlord of the paddy land in respect of which he claims arrears of rent, before it proceeds to decide whether Mendis Singho is the tenant cultivator of that particular paddy land and whether there were any arrears of rent. This is due to the fact that, in order to claim relief under Section 18(1) of Agrarian Services Act No. 58 of 1979, "the two parties to the

*dispute should each bear the character which the Act requires that each should in fact and in law bear" as per **Herath v Peter** (supra).*

Thus, it was incumbent upon the 2nd Respondent to determine that the 4th Respondent is in fact the landlord of the paddy land that he claims to own. This is the most preliminary issue the 2nd Respondent must decide. The Petitioner's contention that the inquiring officer had acted in *ultra vires* when he determined the "ownership" of the paddy land could not be accepted as the issue of ownership is integral to the preliminary issue of the validity of the 4th Respondent's claim that he is the landlord of the specific paddy land. None of the 1st to 3rd Respondents could confer title of a paddy land to the 4th Respondent. Their investigation into his title is limited to the extent of satisfying themselves as to the 4th Respondent's entitlement to relief claimed under the Agrarian Services Act No. 58 of 1979. Therefore, it is a must that they satisfy themselves that the 4th Respondent is the landlord of the paddy land over which the rent was due.

The Petitioner, in support of her complaint that the inquiring officer acted *ultra vires*, also contends that;

- a. the 1st and 2nd Respondents have failed to take note that the Petitioner's father's name appears in the Paddy Lands Register since 1991, which is *prima facie* proof of his ownership over the disputed paddy land,
- b. the Petitioner's father had cultivated the paddy land since the death of *Mendis Singho* in year 2000 up to date and had possession of the said land throughout

- c. even if the 4th Respondent's entitlement of ½ share is acted upon he is not entitled to the possession of the 2 Acre paddy land in its entirety.

These concerns raised by the Petitioner further enhances the importance of the determination of the preliminary issue whether the 4th Respondent is in fact the landlord of the paddy land that he claims to ownership.

The inquiry proceedings could be found produced along with the certified proceedings of HCR/RA/ 120/1995 before the Provincial High Court, annexed to the petition of the Petitioner, marked as P10.

At the said inquiry, the 4th Respondent, two of his predecessors in title *Hector Samarasinghe* and *Sarath Kumara Wijeratne*, have made statements while the Respondent tenant cultivator *Mendis Singho* and the Petitioner's father also have made statements in support of their respective claims.

The 4th Respondent claimed that he had acquired a ½ share of the paddy land called *Mahamerige Watta Meda Kella* in extent of about 2 Acres from *Sarath Wijeratne* on 21.03.1990, while the remaining ½ share owned by one *Yasawardhana Bandara*. The 4th Respondent had been informed by *Wijeratne* that the paddy land had no tenant cultivator.

Hector Samarashighe described the devolution of title of the paddy land. According to him the entire *Yaya* was a part of *Kalawana Nindagama* under *Loku Bandara* and upon his death, his seven children inherited 1/7th share each. They have amicably partitioned the land among themselves and *Mahamerige Watta Meda Kella* was solely cultivated by *Gunawardhana*

Bandara as his entitlement of 1/7th share. The Petitioner and the 4th Respondent claim that the said paddy land is depicted as lot No. 19 in plan No. 1406. It is this *Gunawardhana Bandara* who had transferred ½ share of his title to *Somaratne Bandara*, who in turn transferred title to *Sarath Wijeratne*. The 4th Respondent acquired title from *Sarath Wijeratne* on 21.03.1990.

The title of the other ½ share owned by *Gunawardhana Bandara* was transferred to *Yasawardhana Bandara* from whom the Petitioner's father acquired title on 14.03.1990.

Petitioner's father claimed that he accepts the tenancy of *Mendis Singho* as his predecessors in title have accepted him as such. He further claims that the present dispute arose as the 4th Respondent denied the tenancy of *Mendis Singho* over his ½ share of the paddy land.

It is evident from the inquiry report, that it was revealed during inquiry of the fact that a partition action No. L 115 was pending before the District Court. The preliminary plan No. 1406 of the said partition action was tendered at the said inquiry marked "R3". The P8 report also refers to this document. It is interesting to note that both the Petitioner and the 4th Respondent have claimed that the paddy land they own is depicted in the said plan as lot No. 19, which is in extent of 4 Acres and 15 perches only before this Court.

The paddy land *Mahameruwatte Aluth Asswedduma /Mahameruwatte Asswedduma/Ketagalgode Kumbura* is in extent of 29 Acres and 35 perches, and consists of 20 lots. It was also noted by the inquiring officer that the common predecessor of both the Petitioner and the 4th Respondent had

owned 1/7th share off the total extent of 29 Acres and 35 perches. That being the case its 1/7th share would be a paddy land in extent of about 4 Acres 28 perches, making the Petitioner's and the 4th Respondent's entitlement over 2 Acres of paddy land to each of them.

The inquiring officer, in dealing with the 2 Acre extent of the paddy land, under dispute had observed that it had been "proved" that when the application of the 4th Respondent was pending for its determination, the Petitioner's father had made an attempt through *Mendis Singho* to become the landlord of the said paddy land in its entirety. This is an indication that there was in fact an ambiguity as to the correct extent of the paddy land upon which each of the two contestants are entitled, to upon their 1/2 share, and the Petitioner's father was alive to his entitlement to a paddy land in extent of 2 Acres, instead of 1/2 share of a 2 Acre paddy land.

The 4th Respondent had tendered his paper title at the inquiry along with the one of his immediate predecessor. Deed No. 9382 of 21.03.1990, is a transfer of the ownership acquired by deed No. 6786, in favour of the 4th Respondent, and it indicates a 1/2 share of a land in extent of 2 Acres. The Deed No. 6786, in turn refers to a land in extent of one Acre from his entitlement from the partition action No. 115/P.

This poses the legitimate question, as to the identity of the land in dispute. These deeds limit the 4th Respondent's rights over the disputed paddy land only to a one Acre in extent, whereas the 1/14th share he had acquired over the corpus in the partition action, made him entitled to a paddy land in extent of over 2 Acres.

The inquiring officer confers the status of landlord to the 4th Respondent, in spite of the fact that he denied the tenancy of *Mendis Singho*, on the basis that “*his predecessors in title*” had received rent from the latter and, in seeking arrears of rent, he admits *Mendis Singho’s* tenancy. *Mendis Singho* only admitted paying rent to the predecessor in title of the father of the Petitioner and not to the 4th Respondent. The mere proof of payment of rent to previous owners will not make the 4th Respondent the landlord. He acquired ownership only on 21.03.1990. In his statement to the inquiring officer on 18.06.1990, the 4th Respondent specifically claimed that there was no tenant cultivator who cultivated his part of the paddy land. However, the 4th Respondent demanded rent from *Mendis Singho* on 12.03.1991 by a letter marked X of P11. In that letter the 4th Respondent reminds *Mendis Singho* only of his ½ share and said that he awaits his share of harvest, not on the basis of tenancy but merely on his share entitlement.

The basis of accepting the 4th Respondent’s claim of tenancy over *Mendis Singo*, in spite of the denial of such a relationship by the 4th Respondent, was on the erroneous factual position that “*his*” previous owners have accepted rent when the evidence points to otherwise. The inquiring officer also holds that when the 4th Respondent claimed arrears of rent from *Mendis Singho*, that amounted to an admission of tenancy. This is factually an erroneous conclusion to reach. The witness called by the 4th Respondent himself, *Hector Samarasinghe*, contradicts this position as he clearly states that one *B.Y. Suwastina* was the tenant cultivator of that part of the paddy land and to his knowledge the Paddy Lands Register in 1972 confirms that position. This is a clear indication that prior, to the

acquisition of 1/14th share each by the Petitioner and the 4th Respondent, at some point of time there were two tenant cultivators cultivating under two landlords in lot 19.

If that is the case, it could reasonably be inferred that the predecessors in title of both the Petitioner and the 4th Respondent must have amicably divided the original 1/7th share of paddy land, for the reason that two tenant cultivators cannot cultivate the same paddy land at the same time. No evidence to suggest that there was *Tattumaru* arrangements. Thus, the predecessors in title of the 4th Respondent, may have received rent from the said *B.Y. Suwastina* and certainly not from *Mendis Singho* as the inquiring officer had erroneously concluded.

If *Mendis Singho* was the tenant cultivator who cultivated the full 1/7th share of the paddy land called *Mahameriwatta Meda Kella*, then division each of his two landlord's entitlement of the harvest, poses no difficulty. But the considerations of an inquiry in relation to arrears of rent under Section 18(1) of the Agrarian Services Act is different to the simple act of dividing harvest and should involve a closer scrutiny of the reliability of the conflicting claims, in view of the statutorily laid down consequences of its determinations under the said section.

Section 18 of the Agrarian Services Act envisages an eventuality of non-compliance by a tenant cultivator of the direction by a Commissioner to make good the arrears of rent. The said section also provides that in the event of non-compliance of a direction to pay arrears of rent, follows the consequences of termination of tenancy, an order to vacate from the paddy land and also an order of eviction. These concerns are in support of the

proposition that there must be a paddy land, identifiable with reference to its bounds and metes, if, in the eventuality of enforcement presents itself owing to the attendant circumstances, by which such enforcement could be effectively carried out.

There is no material before the inquiry as to any amicable partition of the paddy land called *Mahameriwatta Meda Kella* and there is no material to conclude that there existed some demarcation or at least an understanding as to the boundaries of the paddy land by which each of the ½ share owners have enjoyed their rights independent of each other. Only in the petition, it is claimed so. The 4th Respondent disputes that fact. Therefore the disputed paddy land remains as an undivided land with co-ownership, in the absence of any arrangement to possess parts of it separately and independently of each other. It is unfortunate that the partition action No. 115/P pending before the District Court of Ratnapura was dismissed on 31.03.2016 by the judgment 4R1, upon the failure of the parties to prove their respective claims. But the said dismissal brings the co-ownership of the Petitioner and the 4th Respondents to back an undivided ½ share each of Lot No. 19.

Therefore, in order to have effective and meaningful dispute resolution between the 4th Respondent and his alleged tenant cultivator as provided for in Section 18, the Commissioner should have satisfied himself as to the identity of the paddy land over which the said Respondent claims his entitlement of rent. In *Wijesuriya v Senaratne* (1997) 2 Sri L.R. 323, Jayasuriya J endorsed the finding of fact by the Assistant Commissioner of Agrarian Services as to the identity of the paddy land, which he had arrived at, after undertaking an investigation to ascertain whether the

paddy land that had been described differently in the Paddy Lands Register and by the parties before him, is one and the same.

Section 68 of the Act defines the term ““ *landlord*” with reference “*to an extent of paddy land means the person other than an owner cultivator, who will for the time being be 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, the conferment of the status of a landlord under the Agrarian Services Act, does not solely rests on the paper title. It includes an entitlement of rent and that too “*in respect of such extent*”, thereby allowing some flexibility to an inquirer, to arrive at a determination on the question of whether an applicant is in fact a landlord, in consideration of attendant circumstances. The words “*in respect of such extent*” in the context of the instant application, denotes the requirement of the determination of exact extent of the paddy land of which the predecessors in title of the 4th Respondent have received rent.

It is significant to note from the material before the inquirer that both the 4th Respondent and the father of the Petitioner have acquired title to the paddy land within a matter of few days of each other Before even the question of payment of rent had arisen, the dispute over cultivation rights of 2 Acre paddy land had erupted resulting in complaints to the 1st to 3rd Respondents as well as to the Police. Therefore, in order to ascertain the paddy land and “*in respect of such extent*”, the inquirer should have focused his mind in the proper identification of the paddy land in respect of which he conferred the status to the 4th Respondent as landlord, in view of the claim of the father of the Petitioner that he was in possession of the paddy land to which he had acquired paper title. The inquiring officer had

failed to consider whether the paddy land owned by the 4th Respondent in fact is the paddy land that had been cultivated by *Mendis Singho* under a tenancy, before the former's acquisition of title to it.

In this context and in view of the challenge mounted by the Petitioner on the validity of the determination P8 on the basis of *ultra vires*, it is relevant to cite the judgment *Hayley & Co Ltd, v Commercial and Industrial Workers & Others* (1995) 2 Sri L.R. 42, where this Court had quoted the following portion from statement of Lord *Pearce* in the judgment of *Anisminic Ltd. v. Foreign Compensation Ltd.* (1969) 2 A.C. 147;

" ... Lack of Jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice or it may ask itself the wrong questions, or it may not take into account matters which it was directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause the purported decision to be a nullity".

The above reasoning indicates that the inquirer, in determining the validity of the assertion of the 4th Respondent that he is the landlord of 2

Acre plot of *Mahameriwatta Meda Kella*, had not taken into account, matters which it was directed to take into account, rendering the said determination in P8 a nullity.

It is the contention of the 4th Respondent that with the pronouncement of the Judgment of the Provincial High Court in Writ Application No. 120/1995, the question of the tenancy of *Mendis Singho* over the 4th Respondent's land had "*reached finality*". It appears that the 4th Respondent relies on the principle of *Res Judicata* when he made the said submission before this Court to impress that the dispute had reached finality with the dismissal of the Writ Application filed by *Mendis Singho* challenging the validity of P8 before the Provincial High Court. The present Petitioner or her father were not cited in that application as Respondents and therefore are not parties to that litigation. It is correct that they seek almost identical remedy against the determination P8 in the instant application. But since the pronouncement of P8, the 1st to 3rd Respondents acting on the findings of P8, have proceeded to make several other consequential orders under the Agrarian Development Act No. 46 of 2000, to the extent of handing over the possession of the paddy land claimed to have owned and possessed by the Petitioner. This grievance had not been considered by a Court of Law before.

This consideration brings to focus the position taken up by the 1st to 3rd Respondents that the Petitioner lacks standing to maintain this application. Certainly the Petitioner has a grievance over the decisions and orders, contained in P8 and continued through P14(a), P14(b), P21, P27, P28(a) and P28(b) since these decisions, if put into effect, will adversely affect against his interest over the paddy land he claims to be in possession

of. Thus, the Petitioner "*has a genuine grievance*" to seek Writ of Certiorari, as per the judgment of this Court ***Forbes and Walker Tea Brockers v Maligaspe & Others*** (1998) 2 Sri L.R. 378.

In relation to the decisions and orders of the 1st to 3rd Respondents in P14(a), P14(b), P21, P27, P28(a) and P28(b), this Court already noted the common thread which runs through all these decisions is the status of 4th Respondent as the landlord of the tenant cultivator *Mendis Singho*, under the Agrarian Services Act.

Mendis Singho died in the year 2000 and it appears that until his death, he had not settled the arrears of rent as per the decision of P8, which had been communicated to him through P9. The several decisions and orders in P14(a), P14(b), P21, P27, P28(a) and P28(b) were made under the Agrarian Development Act No. 46 of 2000 and after the death of said *Mendis Singho*. In continuing with the claim of arrears of rent, the 1st to 3rd Respondents have proceeded to impute the arrears on the heirs of late *Mendis Singho* as reflected in P14(a), P14(b), P21, P27, P28(a) and P28(b).

In P14(a), the 2nd Respondent stated that since the death of tenant cultivator *Mendis Singho*, "*the Courts have accepted his wife W.P. Ranmenike, as a party to the appeal filed by him*" and therefore directing the said W.P. Ranmenike and her son Y.A. Viraj Kumara Jayatilaka, to pay the arrears of rent to the 4th Respondents. The total of arrears of rent for the period commencing from 1990/1991 to 2013/2014 Maha Season, is quantified as Rs. 152,735.00. Since there was no compliance, P14 terminated the tenancy and directed the heirs to vacate from the paddy land. However, by P21, the

1st Respondent had nullified the directives P14(a) and P14(b) retaining the decision made in P8 that the arrears of rent of Rs. 1550.00.

The 2nd Respondent by P27 directed the heirs of *Mendis Singho* to settle the arrears of rent and warned that non-compliance would result in their eviction from the paddy land. Both P28(a) and (b) directed them to handover possession of the paddy land to the 4th Respondent and failure would result in the eviction by Fiscal of Court.

In challenging the validity of these decisions and orders made by the 1st to 3rd Respondents, the Petitioner contends that Agrarian Development Act had no statutory provisions governing the succession of tenancy rights after the death of the tenant cultivator. The Petitioner states that the heirs of *Mendis Singho* have already informed the 1st to 3rd Respondents that they do not wish to continue as tenant cultivators under her father and are not in possession of any paddy land. Therefore she states that they have no interest in the matter.

Section 1D of the Agrarian Development (Amendment) Act No. 46 of 2011, provided for the "*Devolution of the rights of tenant cultivators*" where the rights of a tenant cultivator devolve on the surviving spouse of such tenant cultivator. Whether these provisions are applicable retrospectively to the tenancy of *Mendis Singho*, who died in the year 2000, was not considered by the 1st to 3rd Respondents. But they have proceeded to continue with the imposition of arrears of rent due from *Mendis Singho* on his wife *Ranmenike* simply on the basis that she was substituted by the Court to prosecute the appeal. The fact she was substituted by this Court to prosecute an appeal was perceived by the Respondents as an act of

judicial acceptance of her substitution to the tenancy as well. This clearly is an erroneous conclusion reached by the 1st to 3rd Respondents. In *Careem v Sivasubramaniam & Another* (2003) 2 Sri L.R. 197, this Court has held that, upon an application for substitution of an appeal pending before this Court, “...the only order that this Court could make would be that the "proper person" to be substituted in place of the deceased-appellant would be the petitioner for the limited purpose of prosecuting the appeal and nothing more.” Therefore, solely upon the fact that she was substituted to prosecute an appeal before this Court, that had been preferred by her late husband, does not mean that she represented his estate before this Court. The conferment of the title tenant cultivator to her based on substitution, is also clearly an erroneous decision.

This Court accordingly holds that the decisions and orders made by the 1st to 3rd Respondents, as reflected in the documents P14(a), P14(b), P21, P27, P28(a) and P28(b) are tainted with illegality and are made in *ultra vires*.

In the circumstances, this Court answers the issue it had raised at the outset of this judgment that whether the conclusions reached and acted upon by the 1st to 3rd Respondents, that *Mendis Singho* is in fact the tenant cultivator of the 4th Respondent and “*the arrears of rent are not being paid*”, are made after proper evaluation of available evidence, in the negative and order, quashing the decisions and orders that are reflected in P8, P14(a), P14(b), P21, P27, P28(a) and P28(b) as prayed for by the Petitioner. This Court further directs the 2nd Respondent to hold a fresh inquiry on the application of the 4th Respondent to determine the issue whether late

Mendis Singho was the tenant cultivator of the said paddy land claimed by the 4th Respondent and whether there is arrears of rent.

In view of the said determination by this Court the issuance of Writs of *Prohibition* and *Mandamus* as sought by the Petitioner does not arise for consideration, as these reliefs were sought pending determination of the said partition action, which had been dismissed.

Parties will bear their costs.

JUDGE OF THE COURT OF APPEAL