

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

In the matter of an application for revision
under and in terms of Article 138 of the
Constitution.

**Court of Appeal Case No:
CA/CPA/0137/2024**

**HC Rev (Hambantota) Case
No:
HCRA 19/2024**

**District/Magistrate Court
(Hambantota) Case No:
4904/24/S**

Pubudu Sandaruwan Ramanayake,
Assistant Commissioner for Agrarian
Development,
District office of Agrarian
Development,
Hambantota.

Applicant

Vs.

Sumith Amarawickrama
Siyambalagaswila, Beragama.

Respondent

Somasiri Amarawickrama
Siriamara,
Dehilanda,
Ambalantota.

Aggrieved Party

And

Sumith Amarawickrama
Siyambalagaswila, Beragama.
Ambalantota.

Respondent-Petitioner

Vs.

Pubudu Sandaruwan Ramanayake,
Assistant Commissioner for Agrarian
Development,
District office of Agrarian
Development,
Hambantota.

Applicant-Respondent

Somasiri Amarawickrama
Siriamara,
Dehilanda,
Ambalantota.

Aggrieved Party-Respondent

AND NOW BETWEEN

Sumith Amarawickrama
Siyambalagaswila, Beragama.
Ambalantota.

Respondent-Petitioner-Petitioner

AND

Pubudu Sandaruwan Ramanayake,
Assistant Commissioner for Agrarian
Development,
District office of Agrarian
Development,
Hambantota.

Applicant-Respondent-Respondent

Somasiri Amarawickrama
Siriamara,
Dehilanda,
Ambalantota.

Aggrieved Party-Respondent-Respondent

Hon. Attorney General,
Attorney General Department
Colombo 12.

Respondent

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

Counsel : Asthika Devendra with Aruna
Madushanka for the Respondent-
Petitioner-Petitioner.

M.C. Jayaratne, P.C. with Lakshi
Weerasekera instructed by N. A. Nishani
H. Hettiarachchi for the Aggrieved Party-
Respondent-Respondent.

Argued on : 19.06.2025

Written Submissions
of the Respondent-Petitioner
-Petitioner
tendered on : 01.09.2025

Written Submissions
of the Applicant-Respondent
-Respondent tendered on : Not tendered

Written Submissions
of the Aggrieved Party
-Respondent-Respondent
tendered on : 31.07.2025

Decided on : 03.10.2025

K. M. S. DISSANAYAKE, J.

The instant application in revision arises from an order of the Learned High Court Judge of the Southern Province holden at Hambantota dated 10.10.2024, a certified copy of which was annexed thereto marked as **P13** (hereinafter called and referred to as ‘the order’) whereby, the learned High Court Judge had dismissed the application in revision filed before it by the Respondent-Petitioner-Petitioner (hereinafter called and referred to as ‘the Petitioner’) against the order of the Learned Magistrate of Hambantota dated 30.09.2024, a certified copy of which was annexed thereto marked as **P11** whereby, the Learned Magistrate had upon an application made thereto by the Aggrieved Party-Respondent-Respondent (hereinafter called and referred to as ‘the Aggrieved Party’) directed the Fiscal to forthwith evict the Petitioner from the Land and premises in extent of 04 Acres 02 Roods 22 Perches together with the residential house standing thereon being the subject matter as morefully, described in the schedule to the written report filed thereat under and in terms of the provisions of section 8(1) of the Agrarian Development Act No. 46 of 2000 (as amended) (hereinafter called and referred to as ‘the Act’) by the Applicant-Respondent-Respondent (hereinafter called and referred to as ‘the applicant’) for eviction of the Petitioner therefrom and to deliver possession thereof to the Aggrieved Party mentioned in the written report as the person to whom delivery of possession thereof, should be made. Learned President’s Counsel for the aggrieved party had submitted to Court that the limited objections already, filed in Court by and on behalf of the Aggrieved Party can be regarded as

objections of his to the instant application in revision, while, the learned State Counsel for the Applicant had submitted to Court that, the State was not intending to file objections to the principle matter. (Vide-Minutes of Court dated 11.03.2025)

This case has a chequered history. In terms of what has been averred by the Petitioner in paragraphs 4 to 12 and 15 of his petition, **a)** the aggrieved party had lodged a complaint under and in terms of the provisions of Section 18 (1) and 26(1) of the Agrarian Services Act No. 58 of 1979 as amended by Act No. 04 of 1991 to the Commissioner of the Agricultural Services, Hambantota complaining that Simon Appu Amarawickrama, the Petitioner's father, who was said to be the tenant-cultivator of the said paddy land had defaulted in the payment of the rent (ප්‍රවේණිය නිමකර ඇති බව.); that **b)** in pursuant to the complaint lodged by the 1st Respondent, an inquiry bearing No 3/86/1129 was commenced and at the conclusion of the said inquiry, it was determined that Simon Appu Amarawickrama, the father of the Petitioner, has defaulted in the payment of rent; that **c)** subsequent to the inquiry, Eviction Order dated 12.06.1996 a copy of which was annexed to the petition marked as **P1**, was issued on Simon Appu Amarawickrama to evict him from the extent of paddy land in extent of 04 Acres 02 Roods 22 Perches under and in terms of section 18 (2) (3) of the Agrarian Services Act No. 58 of 1979 as amended by Act No. 04 of 1991 for non-payment of rent; that **d)** subsequent to the death of his father Simon Appu Amarawickrama, on 18.11.2013, the Petitioner was issued an Eviction order under the provisions of section 08 of the Agrarian Development Act No. 46 of 2000 as amended to vacate the land on or before 19.12. 2013, a copy of which was annexed to the petition marked as **P2**; that **e)** the Petitioner had instituted a Writ Application seeking a writ of *certiorari* in the Provincial High Court of Hambantota bearing case No. HCWA12/2013 challenging the said Eviction Order (**P2**) and the learned High Court judge had by the order (**P3**), dismissed the said Application and thereafter, the Petitioner had appealed to the Court of Appeal challenging the said High Court Order and the Court of

Appeal by its order, (**P4**), dismissed the Appeal and thereafter, the Petitioner had preferred a Special Leave to Appeal Application against the said Court of Appeal Judgment and the Supreme Court had by its order **P5**, dismissed the said Application; that **f)** consequent to the dismissal of the said Special Leave to Appeal Application by the Supreme Court, the Assistant Commissioner of Agrarian Development issued an Eviction Order dated 25.03.2024, a copy of which was annexed to the petition marked as **P6**, against the Petitioner to vacate the land on or before 10.04.2024, in terms of Section 8 of the Act; that **g)** since the petitioner did not vacate the land as per the said Eviction Order, the Assistant Commissioner for Agrarian Development had filed a written report in the case bearing No. 4904/2024/S in the Magistrate's Court of Hambantota-a copy of which was annexed to the petition marked as **P7**, seeking to forthwith evict the Petitioner from the extent of the paddy land- in extent of 04 Acres 02 Roods 22 Perches as morefully, described in the schedule to the written report (hereinafter called and referred to as 'the extent of paddy land') and to deliver the possession thereof to the Aggrieved Party; that **h)** the Learned Magistrate had having considered the written report (**P7**), made an Order on 26.08.2024, a copy of which was annexed to the petition marked **P8**, to evict the Petitioner from the extent of the paddy land-as morefully, described in the schedule to the written report and to deliver possession thereof to the Aggrieved Party; that **i)** consequent to the Order of the Learned Magistrate of Hambantota (**P8**), the Fiscal of the Court who had proceeded to the extent of paddy land on 10.09.2024 for execution of the eviction order as directed by Court, had without evicting the Petitioner, submitted a report, a copy of which was annexed to the petition marked as **P9**, stating that there is a large house and other mixed cultivations in addition to the paddy cultivation in the extent of paddy land and there is no reference in the written report to the house and highland and thereby, seeking clarifications from the Court regarding the inhabitants of the house and highland from the said report; that **j)** thereafter, on 30.09.2024, an *ex-parte* application, a copy of which was annexed to the petition marked as **P10**, had been made by the Aggrieved Party seeking to evict

the Petitioner from the possession of the entire extent of paddy land including the house and the high land and to deliver possession thereof to the Aggrieved Party in terms of the section 101 of the Act; that **k)** even though there had been no application made of behalf of the Applicant upon an application made on behalf of the Aggrieved Party, the learned Magistrate of Hambantota had by his order dated 30.09.2024, a copy of which was annexed to the petition marked as **P11**, directed to forthwith evict the Petitioner from the entire extent of paddy land in the extent of 4 Acres 2 Roods and 22 Perches including the house and to deliver possession thereof, to the Aggrieved Party. It is this order that the Petitioner had in the application in revision bearing No. HCRA 19/24 preferred by him to the Provincial High Court of Southern Province holden at Hambantota, sought to revise and set aside. However, the learned High Court Judge of Hambantota had proceeded to dismiss it by *inter-alia* holding that the Petitioner has not demonstrated any exceptional circumstances for the Court to interfere with the order of the learned Magistrate of Hambantota (**P11**).

It is significant to observe, that according to his own pleadings of the Petitioner, three eviction orders had been issued by the Assistant Commissioner General of Agrarian Development in respect of the same extent of paddy land as morefully, described in the schedule to the written report filed by the Assistant Commissioner General of Agrarian Development in the instant case filed in the Magistrate Court of Hambantota (**P6**) on three different occasions, the first of which was on the said Simon Appu Amarawickrama- father of the Petitioner of the instant application as far back as on 12.06.1996, (**P1**) under the provisions of the Agrarian Services Act as amended and the other two were on the Petitioner himself (**P2** and **P6**) under the provisions of 8(1) of the Agrarian Development Act as amended.

It is important to observe that there was no material on the record to show that the said Simon Appu Amarawickrama had canvassed before any Court the eviction order so issued on him as far back as on 12.06.1996, (**P1**) until his

death and therefore, it remained unchallenged and uncontroverted until upto his death.

However, the Petitioner had invoked the writ jurisdiction of the Provincial High Court of Southern Province holden at Hambantota in the case bearing No. HCWA 12/2013 seeking a writ of *certiorari* quashing the second eviction order dated 18.11.2013 issued by the Assistant Commissioner General of Agrarian Development under section 8(1) of the Act on the Petitioner in the instant application in revision subsequent to the death of his father, Simon Appu Amarawickrama and the High Court of Hambantota had in its order (**P3**), dismissed the same and the appeal preferred therefrom to the Court of Appeal challenging the said order of the High Court was also dismissed by the Court of Appeal by its order (**P4**) and the special leave to appeal application filed before the Supreme Court seeking leave to appeal from the Order of the Court of Appeal too, had been refused by the Supreme Court by its order (**P5**). Hence, the second Eviction order so issued by the Assistant Commissioner General of Agrarian Development (**P2**) still, remain valid and in force.

However, it is strange to observe that while, the second Eviction order so issued on the Petitioner, by the Assistant Commissioner General of Agrarian Development (**P2**) was still, in force and valid as enumerated above, he had without taking steps to present to the Magistrate Court of Hambantota a written report on the strength of the second Eviction order for eviction of the Petitioner from the extent of paddy land, nevertheless proceeded to issue a fresh Eviction order dated 25.03.2024 (**P6**) on the Petitioner under the provisions of section 8(1) of the Act thereby, directing the Petitioner to vacate the extent of paddy land on or before 10.04.2024, and since, the Petitioner did not vacate the extent of paddy land as directed, the Assistant Commissioner General of Agrarian Development had presented to the Magistrate Court of Hambantota a written report under section 8(1) of the Act (**P7**) and the learned Magistrate of Hambantota had by his order dated 26.08.2024 (**P8**), directed Fiscal to forthwith evict the Petitioner in occupation of the extent of paddy land

and to deliver possession thereof to the Aggrieved Party. However, it is significant to observe that the Petitioner had not opted to canvas the order of the learned Magistrate of Hambantota (**P8**) before the Provincial High Court of Southern Province holden at Hambantota.

Hence, the third Eviction order so issued on the Petitioner (**P6**) by the Assistant Commissioner General of Agrarian Development under section 8(1) of the Act and the order of the learned Magistrate of Hambantota made under section 8(2) of the Act in pursuant to written report presented to it by the Assistant Commissioner General of Agrarian Development directing the Fiscal to forthwith evict the Petitioner from the occupation of the extent of paddy land and to deliver possession thereof to the Aggrieved Party, too, still remain unchallenged and uncontroverted.

Besides, the Petitioner had in paragraphs 23 (i), (ii), (iii) and (iv) of his petition tendered to the High Court of Hambantota along with the revision application bearing No. 19/24 filed before it by him, a certified copy of which was annexed to the petition filed before us by the Petitioner marked as **P12**, clearly, and unequivocally, admitted the legal validity of all three Eviction orders issued by the Assistant Commissioner General of Agrarian Development both on his father and on him (**P1**, **P2** and **P6**), and the order made by the learned Magistrate of Hambantota (**P8**) as enumerated above.

It is thus, abundantly, clear that the Petitioner in the application in revision filed by him before the High Court of Hambantota, had never sought to canvas before it the legality and/or the validity of the Eviction order so issued on the Petitioner (**P6**) by the Assistant Commissioner General of Agrarian Development under section 8(1) of the Act or the principal order of the learned Magistrate of Hambantota made in pursuant to written report presented to it by the Assistant Commissioner General of Agrarian Development (**P8**), but, **a consequential order** made by the learned Magistrate of Hambantota (**P11**) directing Fiscal to forthwith evict the Petitioner from the occupation of the

extent of paddy land and to deliver possession thereof to the Aggrieved Party consequent upon an application made thereto by the Aggrieved Party (**P10**), and the order made by the learned High Court Judge of Hambantota (**P13**) dismissing the application in revision filed by the Petitioner against the order of the learned Magistrate of Hambantota (**P11**) made subsequent to **his principal order (P8)** delivered under section 8(2) of the Act. [Emphasis is mine]

It is in this context, I would think it expedient at this juncture to examine the facts and circumstances as averred in the petition filed by the Petitioner before the High Court of Hambantota (**P12**) which according to him, led him to have preferred the application in revision bearing No. HCRA 19/24 before it.

It may now, be examined.

Fiscal of the Court who had proceeded to the extent of paddy land on 10.09.2024 for execution of the eviction order as directed by Court, had without evicting the Petitioner, submitted a report to Court, a copy of which was annexed to the petition marked as **P9**, stating that there is a large house and other mixed cultivations in addition to the paddy cultivation in the extent of paddy land and there is no reference in the written report to the house and highland and thereby, seeking clarifications from the Court regarding the inhabitants of the house and highland from the said report. In the result, an *ex-parte* application, a copy of which was annexed to the petition marked as **P10**, had been made to the Magistrate Court of Hambantota, by the Aggrieved Party on 30.09.2024, seeking to evict the Petitioner from the possession of the entire extent of paddy land including the house and the high land and to deliver possession thereof to the Aggrieved Party in terms of the section 101 of the Act and consequent upon the application so made by the Aggrieved Party (**P10**), the learned Magistrate of Hambantota had by his order dated 30.09.2024, a copy of which was annexed to the petition marked as **P11**, directed to forthwith evict the Petitioner from the entire extent of paddy land in the extent of 4 Acres 2 Roods and 22 Perches including the house and to

deliver possession thereof, to the Aggrieved Party. It is this order that the Petitioner had in the application in revision bearing No. HCRA 19/24 preferred by him to the Provincial High Court of Southern Province holden at Hambantota, sought to revise and set aside. However, the learned High Court Judge of Hambantota had proceeded to dismiss it by *inter-alia* holding that the Petitioner had not demonstrated any exceptional circumstances for the Court to interfere with the order of the learned Magistrate of Hambantota (**P11**).

The Petitioner in the instant application in revision seeks to revise and set aside the order of the learned High Court Judge of Hambantota (**P13**) as well as the order of the learned Magistrate of Hambantota (**P11**) on the following grounds as morefully, enumerated in paragraph 22 (a) to (h) of the petition of the Petitioner which according to him, constitute exceptional circumstances warranting this Court to exercise its extra-ordinary revisionary jurisdiction vested in it under Article 138 of the Constitution in revision of both of those two orders, and they may be reproduced *verbatim* the same as follows;

a. The Learned High Court Judge has failed to consider that the order of the Learned Magistrate dated 30.09.2024 is contrary to the law;

b. The Learned Magistrate of Hambantota made an order in case bearing number 4904/24/S on 30.09.2024 (P11) to evict the Petitioner from his house considering the application made by the Aggrieved Party Respondent-Respondent however the aggrieved party does not have such authority to make such application which is bad in law;

c. The Learned Magistrate of Hambantota has not considered any evidence and valid documents when make the order in case bearing number 4904 /24/S on 30.09.2024 (P11) which is bad in law;

d. The Learned High Court Judge and the learned Magistrate have failed to consider that under the section 8 (1) and 8 (2) of the Agrarian Development Act, the learned Magistrate has the power only to execute

the decision of the Assistant Commissioner General of Agrarian Development;

e. The Learned High Court Judge and the learned Magistrate have failed to consider that the Commissioner General is the authority to identified the paddy land which is in dispute and without his opinion and or clarification the learned Magistrate has no power to make eviction orders contrary to the contents in the application filed by the Assistant Commissioner General of Agrarian Development before the Magistrate Court;

f. The Learned High Court Judge and the learned Magistrate have failed to consider that the section 8 of the Agrarian Development Act does not provide for the Aggrieved Party to make request for an Eviction Order or to make request to amend an Eviction Order requested by the Commissioner General;

g. The Learned High Court Judge and the learned Magistrate have failed to consider that it is contrary to the law to decide without instructions from the Commission General whether the Eviction Order dated 25.03.2024 was issued by the Assistant - Commissioner for the Agrarian development, only for the paddy land or the house of the Petitioner where the Petitioner had been residing for over 50 years and the agricultural highland were included in the subject property;

h. The learned High Court judge has failed to consider that the learned Magistrate when he made the order dated 30.09.2024 (P11) has relied on the report of the Fiscal dated 10.09.2024 where it was stated that it can be observed that the highland (ගොඩ ඉඩම) is clearly a part and parcel of the land named as a paddy land which is clearly violation of law as only the Commissioner General can decide whether the dry land is a part of the paddy land.”

Hence, the principal ground of attack of both of those two orders appears to be two-fold, namely;

- a) Both the learned High Court Judge of Hambantota as well as the learned Magistrate of Hambantota had failed to consider that under the section 8(1) and (2) of the Act, the learned Magistrate has the power only to execute the decision of the Commissioner General of Agrarian Development and hence, the order of the learned Magistrate of Hambantota dated 30.09.2024 (**P11**) is bad in law inasmuch as the order is based on an application made to Court (**P10**) by the Aggrieved Party seeking eviction of the Petitioner from the occupation of the extent of the paddy land and to deliver the possession thereof to the Aggrieved Party, for; the Aggrieved Party has no authority to make an application as such to Court, but, in terms of section 8(1) of the Act, it is the Commissioner General of Agrarian Development who has lawful authority to make an application to Court seeking eviction of a person from the occupation of the extent of the paddy land and to deliver the possession thereof to the person specified in the written report presented to Magistrate Court by the Commissioner General of Agrarian Development under section 8(1) of the Act;
- b) Both the learned High Court Judge of Hambantota as well as the learned Magistrate of Hambantota had failed to consider that the Commissioner General of Agrarian Development is the authority to identify the paddy land which is in dispute and without his opinion and/or clarification, the learned Magistrate has no power to make Eviction order contrary to the contents in the application filed by the Commissioner General of Agrarian Development before the Magistrate Court under section 8(1) of the Act.

The grounds of attack so enumerated above, would I think, call for separate treatment.

a) Both the learned High Court Judge of Hambantota as well as the learned Magistrate of Hambantota had failed to consider that under the section 8(1) and (2) of the Act, the learned Magistrate has the power only to execute the decision of the Commissioner General of Agrarian Development and hence, the order of the learned Magistrate of Hambantota dated 30.09.2024 (P11) is bad in law inasmuch as the order is based on an application made to Court (P10) by the Aggrieved Party seeking eviction of the Petitioner from the occupation of the extent of the paddy land and to deliver the possession thereof to the Aggrieved Party, for; the Aggrieved Party has no authority to make an application as such to Court, but, in terms of section 8(1) of the Act, it is the Commissioner General of Agrarian Development who has lawful authority to make an application to Court seeking eviction of a person from the occupation of the extent of the paddy land and to deliver the possession thereof to the person specified in the written report presented to Magistrate Court by the Commissioner General of Agrarian Development under section 8(1) of the Act;

It may now, be examined.

It is undisputed fact, that Eviction order dated 26.08.2024 had been made by the learned Magistrate of Hambantota under section 8(2) of the Act directing the Fiscal to forthwith evict the Petitioner from the occupation of the extent of the paddy land as morefully, described in the schedule to the written report presented by the Assistant Commissioner General of Agrarian Development to the Magistrate Court of Hambantota under section 8(1) of the Act (P7) and to deliver possession thereof, to the person specified therein, namely; the Aggrieved Party; and that, the Fiscal of the Court who had proceeded to the extent of paddy land on 10.09.2024 for execution of the eviction order as directed by Court, had without evicting the Petitioner, submitted a report (P9), stating that there is a large house and other mixed cultivations in addition to the paddy cultivation in the extent of paddy land and there is no reference in the written report to the house and highland and thereby, seeking clarifications from the Court regarding the inhabitants of the house and highland from the said report; and that thereafter, on 30.09.2024, an *ex-parte* application had

been made by the Aggrieved Party (**P10**), seeking to evict the Petitioner from the possession of the entire extent of paddy land including the house and the high land and to deliver possession thereof to the Aggrieved Party in terms of the section 101 of the Act; and that the learned Magistrate of Hambantota had made order (**P11**) directing the Fiscal to forthwith evict the Petitioner from the occupation of the extent of the paddy land as morefully, described in the schedule to the written report presented by the Assistant Commissioner General of Agrarian Development to the Magistrate Court of Hambantota under section 8(1) of the Act (**P7**) and to deliver possession thereof, to the person specified therein, namely; the Aggrieved Party.

Hence, it becomes manifestly, clear that what the Aggrieved Party did was that, the Aggrieved Party had by the said *ex-parte* application dated 30.09.2024, urged the order of the learned Magistrate dated 26.08.2024 (**P8**) to be forthwith, executed by the Fiscal and hence, the said *ex-parte* application cannot in any manner, be construed in law, as an application made to Court by the Aggrieved Party under section 8(1) of the Act for; such an order had already, been made by the learned Magistrate of Hambantota under section 8(2) of the Act in consequent to the written report filed before it by the Assistant the Commissioner General of Agrarian Development under section 8(1) of the Act.

It thus, clearly, appears to me that such a contention as advanced by the Petitioner as enumerated above, had been advanced by him in total misapprehension and/or in total misconception of the nature of the application made to the learned Magistrate of Hambantota by the Aggrieved Party in his *ex-parte* application dated 30.09.2024 (**P10**), as well as of the precise nature of the order made by the learned Magistrate of Hambantota (**P11**) consequent upon the said application (**P10**) made to Court by the Aggrieved Party in that the Petitioner had totally, mistaken the precise nature of the *ex-parte* application made to Court by the Aggrieved Party seeking execution of the order already, made by Court under section 8(2) of the Act for one that may be made under

section 8(1) thereof by the Commissioner General of Agrarian Development seeking an order for Eviction under section 8(2) of the Act, of the person from the occupation of the extent of paddy land and to deliver possession thereof, to the person specified in the written report presented to Court by him.

In the result, I would hold that the contention as enumerated above cannot in any manner, sustain both in fact and law and as such it ought to be dismissed *in-limine* for the reasons stated above.

Besides, it is a well established principle in law, that one who is decreed by a Court of competent jurisdiction to be a victor, has all the legitimate rights to reap the fruits of his victory, forthwith and without any delay. Hence, there is nothing in law to prevent or deprive of the Aggrieved Party to whom the possession of the extent of the paddy land as morefully described in the schedule to the written report (**P7**) made to Court by the Assistant Commissioner General of Agrarian Development, had been directed to be handed over by the Fiscal by forthwith evicting the Petitioner from the occupation thereof, to make an application to the Magistrate Court of Hambantota seeking immediate execution of the Eviction order already, made in her favour by Court against the Petitioner without any further delay for; the Aggrieved Party being one who is so decreed by the learned Magistrate of Hambantota to be a victor, has all the legitimate rights to reap the fruits of his victory, forthwith and without any delay.

I would therefore, hold that the contention so advanced by the Petitioner as enumerated above, is not entitled to succeed both in fact and law, and as such it should be rejected on this ground too.

In the light of the above, I would hold that the contention so advanced by the Petitioner as enumerated above, ought to be rejected *in-limine*.

b) Both the learned High Court Judge of Hambantota as well as the learned Magistrate of Hambantota had failed to consider that the Commissioner General of Agrarian Development is the authority to

identify the paddy land which is in dispute and without his opinion and/or clarification, the learned Magistrate has no power to make Eviction order contrary to the contents in the application filed by the Commissioner General of Agrarian Development before the Magistrate Court under section 8(1) of the Act.

It may now, be considered.

The Assistant Commissioner General of Agrarian Development had in his written report presented to the Magistrate Court of Hambantota (**P7**) seeking eviction of the Petitioner from the extent of paddy land and to deliver possession thereof to the person specified therein, namely; the Aggrieved Party, specified and described the extent of the paddy land-the subject matter pertaining to his application with precision and definiteness as follows;

“හම්බන්තොට දිස්ත්‍රික්කයේ අම්බලන්තොට ගොවිජන සේවා බල ප්‍රදේශයේ සියඹලාගසස්විල ග්‍රාම නිලධාරී වසමේ පිහිටි,

උතුරට - ලොට් 152 ඉඩමද

නැගෙනහිර - ලොට් 153 ඉඩමද

දකුණට - ලොට් 157 ඉඩමද

බස්නාහිරට - ලොට් 137 පාර හා ඇලද

මාගම් වූ පල්ලේ බැරගම බැඳ්ද නොහොත් අඹගහකුඹුර නැමැති අක්කර 04 රැඩ් 2 පර්. 22 කුඹුරු ඉඩම වේ.”

Hence, the order of the learned Magistrate of Hambantota dated 26.08.2024, (**P8**) made under section 8(2) of the Act pertains to the extent of paddy land as morefully, described in the schedule to the written report presented to Court by the Assistant Commissioner of Agrarian Development under section 8(1) of the Act and it is this extent of paddy land as precisely, described in the schedule thereto, occupation from which the order (**P8**) directs that the Petitioner be forthwith evicted and the possession thereof be delivered to the Aggrieved Party.

In the result, extent of paddy land to which the order (P8) pertains had properly, been identified by the Assistant Commissioner of Agrarian Development as a land morefully, described in the schedule to the written report presented to the Magistrate Court of Hambantota (P7).

Hence, it is obvious, that it is from this extent of paddy land as precisely, described in the schedule to the written report presented to the Magistrate Court of Hambantota by the Assistant Commissioner General of Agrarian Development (P6) that the order of the learned Magistrate of Hambantota dated 30.09.2024 (P11) made consequent upon to the *ex-parte* application presented to Court by the Aggrieved Party (P10) **seeking only for execution of the said order**, had directed the Fiscal to forthwith evict the Petitioner and to deliver the possession thereof to the Aggrieved Party. [Emphasis is mine]

In the result, it clearly, appears to me that the question of identity of the extent of the paddy land or the question of amendment of the Eviction order did not in any manner, arise before the learned Magistrate of Hambantota when he had in his order (P11), made consequent upon to the *ex-parte* application presented to Court by the Aggrieved Party (P10) **seeking only for execution of the said order**, directed the Fiscal to forthwith evict the Petitioner and to deliver the possession thereof to the Aggrieved Party, for; the extent of the paddy land had been precisely, identified by the Assistant Commissioner General of Agrarian Development not only, in his Eviction order (P6) but also in the written report presented to the Magistrate Court of Hambantota (P7). [Emphasis is mine]

As a matter of law, it is to be observed that, in terms of the definition of the phrase “Paddy land” given in section 101 of the Act, it includes a portion of a paddy land used for constructing his dwelling house of the cultivator as rightly, observed by both the learned Magistrate of Hambantota in his order dated 30.05.2024 (P11) and the learned High Court Judge of Hambantota 10.10.2024 (P13) thereby, leaving no room for an argument that the portion where high land and the dwelling house of the cultivator is situated, does not

form part of the paddy land as now contended by the Petitioner in the instant application in revision before us.

Besides, it is significant to observe that the said Simon Appu Amarawickrama-the Father of the Petitioner, had never raised a challenge to the Eviction order issued on him by the Commissioner of Agrarian Services as far back as 12.06.1996, **(P1)** on the basis that, the portion where highland and residential house is situated, does not form part of the land to which Eviction order relates as now, contended by the Petitioner-the son of the said Simon Appu Amarawickrama.

Furthermore, upon a careful scrutiny of the judgments respectively, pronounced by the High Court of Hambantota exercising its writ jurisdiction **(P3)**, the Court of Appeal and Supreme Court exercising its appellate jurisdiction by their respective decisions **(P4 and P5)** as aforesaid, it clearly, shows that neither of the Court had so found in favour of the Petitioner that the portion where highland and residential house is situated, does not form part of the land to which Eviction order relates as now, sought to be contended by the Petitioner-the son of the said Simon Appu Amarawickrama.

Moreover, it is significant to observe that the Petitioner had never sought to challenge the Eviction order issued on him for the second time on 25.03.2024, by the Assistant Commissioner General of Agrarian Development **(P6)** nor, had he sought so to do when the learned Magistrate of Hambantota had made order under section 8(2) of the Act **(P8)** directing Fiscal to forthwith eject the Petitioner from the occupation of the extent of paddy land as morefully described in the schedule to the written report presented to Court by the Assistant Commissioner General of Agrarian Development under section 8(1) of the Act and to deliver possession thereof to the Aggrieved Party on the basis that the portion where highland and residential house is situated, does not form part of the land to which Eviction order relates as now, sought to be contended by the Petitioner-the son of the said Simon Appu Amarawickrama,

instead, in paragraph 23 (i),(ii),(iii) and (iv) of his petition filed in the High Court of Hambantota in case bearing No. HCRA 19/24 (**P12**), the Petitioner clearly, and unequivocally admitted the corpus from which he was directed to be forthwith ejected and possession thereof to be delivered to the Aggrieved Party, to be one as rightly, and correctly, described in the Eviction order dated 25.03.2024, by the Assistant Commissioner General of Agrarian Development (**P6**).

Furthermore, no iota of evidence had been adduced by the Petitioner in the Court below to prove his assertion that the portion where highland and residential house is situated, does not form part of the land to which Eviction order relates as now, sought to be contended by the Petitioner-the son of the said Simon Appu Amarawickrama other than a mere statement so uttered by him.

In view of the foregoing, I would hold that the next, contention so raised by the Petitioner as enumerated above, too, is not entitled to succeed both in fact and law and as such it too, should be rejected *in-limine*.

In the result, I would see no error both in fact and law in the order of the learned Magistrate of Hambantota dated, 30.09.2024 (**P11**) as rightly, held by the learned High Court Judge of Hambantota in his order dated, 10.10.2024 (**P13**) and therefore, the learned High Court Judge of Hambantota was entirely, right in refusing to act in revision of the order complained of (**P11**) on the basis that there exists no exceptional circumstances to interfere therewith.

In view of all the above circumstances, I would see no legal basis whatsoever, to interfere with the order of the learned Magistrate of Hambantota dated, 30.09.2024 (**P11**) and the order of the learned High Court Judge of Hambantota dated, 10.10.2024 (**P13**).

Hence, I would hold that this is not a fit and proper case for us to exercise the extra-ordinary revisionary jurisdiction vested in us in revision of both of those two orders (**P11** and **P13**).

In the result, I would refuse to act in revision of the order of the learned Magistrate of Hambantota dated, 30.09.2024 (**P11**) and the order of the learned High Court Judge of Hambantota dated, 10.10.2024 (**P13**).

I would thus, dismiss the instant application in revision with costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL