

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

In the matter of an application for  
restitutio in intergrum and revision under  
Article 138 of the constitution of the  
democratic socialist republic of Sri Lanka.

Mohamedthamby Uthumalebbe of  
Hospital Road,  
Samanthurai.

**PETITIONER**

**C.A. PHC) APN. 91/2003**

**H.C. Ampara No. (H.C/NEP/AMB/APN/WRIT 62/97**

-Vs.-

1. The Commissioner of Agrarian Services,  
Agrarian Services Department,  
Colombo.
2. M.M. Rifa Umma  
Assistant Commissioner of Agrarian Service,  
Ampara of the Agrarian Services Department,  
Ampara.
3. P. Chandrawangsa  
Inquiring Officer under the Agrarian Service Act,

4

Of the Agrarian Services Department,  
Ampara.

4. Valipuram Punasundaram of  
Mandur - 02.
5. Samythamby Thillainathan of  
Thuraineelavanai.
6. Thambimuthu Kanapathipillai of  
Periyakallar.
7. Kanapathipillai Murugupillai of  
Koddaikallar.
8. Chettiar Murugupillai of  
Kaluwanohikudy.  
the 4<sup>th</sup> to 8<sup>th</sup> Respondents as the  
Trustees of the Mandur Sri  
Kanthaswamy Temple of Mandur.

**RESPONDENTS**

**AND BETWEEN**

Mohamedthamby Uthumalebbe of  
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**PETITIONER - APPELLANT**

Vs

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the 4<sup>th</sup> to 8<sup>th</sup> Respondents as the Trustees of the Mandur Sri Kanthaswamy Temple of Mandur.

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PETITIONER - APPELLANT -  
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**AND NOW BETWEEN**

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**RESPONDENTS-RESPONDENTS**

**RESPONDENTS - RESPONDENTS**

**RESPONDENTS**

<b>BEFORE</b>	:	Shiran Gooneratne J. & Dr. Ruwan Fernando J.
<b>COUNSEL</b>	:	Manohara de Silva, P.C with Imalka Abeysinghe and H. Kumarage for Petitioner.  M. Nizam Kariapper, P.C with M.I.M. Iynullah for 4 <sup>th</sup> to 8 <sup>th</sup> Respondents.  C. Ekanayake, State Counsel for 1 <sup>st</sup> to 3 <sup>rd</sup> Respondents.
<b>ARGUED ON</b>	:	01.07.2020
<b>WRITTEN SUBMISSIONS :</b>		05.11.2009 (by the Petitioner-Appellant-Petitioner-Appellant-Petitioner  17.02.2010 (by the 4 <sup>th</sup> to 8 <sup>th</sup> Respondents-Respondents-Respondents-Respondents)
<b>DECIDED ON</b>	:	07.08.2020

**Dr. Ruwan Fernando, J.**

**Introduction**

[1] This is an application for restitutio in integrum and revision under Article 138 of the Constitution filed by the Petitioner-Appellant-Petitioner-Appellant-Petitioner seeking to set aside the judgment of the Provincial High Court of Ampara made on 30.09.1998 in the exercise of the writ

jurisdiction vested in the Provincial High Court under Article 154P (4) of the Constitution as amended by the 13<sup>th</sup> Amendment to the Constitution.

[2] The Petitioner-Appellant-Petitioner-Appellant-Petitioner is further seeking an order to set aside the decision made by the Inquiring Officer of the Agrarian Services Department, Ampara (3<sup>rd</sup> Respondent) dated 26.03.1997 (P9) and the order made by the Assistant Commissioner of Agrarian Services Department, Ampara (2<sup>nd</sup> Respondent) dated 16.04.1997 (P10).

[3] The Petitioner-Appellant-Petitioner-Appellant-Petitioner (hereinafter referred to as the Petitioner) prayed for the following reliefs in his application made to the Provincial High Court of Ampara:

- (a) A Writ of Certairari to quash and set aside the inquiry held by the 3<sup>rd</sup> Respondent on 25.03.1997;
- (b) A Writ of Certiorari to quash and set aside the decision made by the 3<sup>rd</sup> Respondent dated 26.03.1997 (P9); and
- (c) A Writ of Certiorari to quash and set aside the order made by the 2<sup>nd</sup> Respondent dated 16.04.1997 (P10).

### **Factual Background**

#### **The Petitioner's Case**

[4] The Petitioner has stated in his Petition dated 19.05.2003 filed in this Court *inter alia*, that:

- a. The Petitioner was the tenant cultivator of the two paddy lands in issue in extent of 15 ½ acres from 1960 and the 4<sup>th</sup> and 8<sup>th</sup> Respondents are the Trustees of the Mandur Sri Kandasamy Kovil which owns the said two paddy lands;

- b. In 1969, the Petitioner was wrongfully deprived of possession and cultivation of the said paddy lands by the then Trustees of the Kandasamy Kovil and thereafter, the Petitioner filed an action in the District Court of Kalmunai bearing No. 19/MICS praying for a declaration that the Petitioner be declared as the tenant cultivator of the aforesaid paddy lands;
- c. The said case was decided in his favour and accordingly, from 1989/1990 Maha season, the Petitioner with his two brothers resumed the cultivation of the said paddy lands and the appeal filed by the 4<sup>th</sup> and 8<sup>th</sup> Respondents against the said judgment was dismissed by the Court of Appeal;
- d. Although the Petitioner was placed in possession of the entire extent of the paddy lands, he only cultivated a divided extent of 1/3 of the said paddy lands (approximately 5 acres) and his two brothers cultivated the balance portion of the said paddy lands (each separately cultivating 1/3 portion) as joint tenant cultivators;
- e. Upon a complaint made by the 8<sup>th</sup> Respondent that the Petitioner as the tenant cultivator of the entire 15 ½ acres had defaulted in the payment of the ground rent from 1989 to 1997, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents held an inquiry in Sinhala language and as he could not understand the language in which the proceedings were conducted, he sought a postponement to enable him to appear through an Attorney-at-law on the next date;
- f. The Petitioner's two brothers who are the registered tenant cultivators of the said paddy lands jointly with him were not summoned for the said inquiry and the his two brothers were not present at the said inquiry;
- g. The Inquiring Officer (3<sup>rd</sup> Respondent) did not record the said application or the refusal of the application for a postponement of

the inquiry and thereafter, by letter dated 26.03.1997 addressed to the 2<sup>nd</sup> Respondent, the Petitioner protested against the said inquiry and requested another inquiry to be held;

- h. The Petitioner received a letter from the 2<sup>nd</sup> Respondent (P10) directing him to pay the ground rent in a sum of Rs. 338,400/- for cultivating the paddy lands in extent of 15 acres and 2 roods and unless the said amount is settled in two instalments, his tenancy rights as the tenant cultivator of the said lands will cease;
  - i. Being aggrieved by the said decision, the Petitioner made an application to the High Court of the North-Eastern Province holden in Ampara seeking to quash the said decision dated 26.03.1997 and the High Court by order dated 15.09.1998 dismissed the said application;
  - j. The Petitioner appealed to the Court of Appeal (Appeal bearing No. 1/99) against the said judgment of the High Court and further filed a revision application bearing No. 6/99. The said revision application was settled consequent to the Petitioner agreeing to settle all areas of rent in respect of the entire paddy lands outstanding from 1989 to 1997 without prejudice to the rights of the parties decide the rights in the appeal bearing No. 1/99; and
- The said appeal was dismissed on the basis that it was out of time and therefore the Petitioner filed an application for Special Leave to Appeal to the Supreme Court, which is now pending before the Supreme Court.

### **The 8<sup>th</sup> Respondent's Case**

[5] The 8<sup>th</sup> Respondent filed objections and while denying all and singular the several averments contained in the Petition, prayed for the dismissal of the application *inter alia*, for the following reasons:

- a. The Petitioner has admitted at the inquiry held before the Agrarian Services Commissioner that he is liable to pay the arrears of rent determined by the Commissioner of Agrarian Services and therefore, the Petitioner cannot challenge the correctness of the said determination;
- b. The Petitioner has from 1960 claimed to be the tenant cultivator in respect of the entire 16 acres of the paddy lands and as such, he is not entitled to claim that his two brothers are also entitled to be noticed;
- c. The Petitioner's is not entitled to seek to invoke the discretionary revisionary or restitutio in integrum jurisdiction of the Court of Appeal as he had already invoked the discretionary jurisdiction of the Court of Appeal in the earlier revision application bearing No. 6/99; and
- d. The Petitioner had not adduced reasons for the long delay, almost 4 years for not coming before this Court.

**Application to the Commissioner of Agrarian Services and the Scope of the Inquiry held under section 18 (1) of the Agrarian Services Act**

[6] The 4<sup>th</sup> and 8<sup>th</sup> Respondents who are the Trustees of the Kandasamy Temple of Mandoor who owns two blocks of paddy land, viz, "Samy Vayal" in extent of 8 acres and "Simnnakurukkuvayal" in extent of 7 acres and 2 roods made a written application addressed to the Assistant Commissioner of Agrarian Services, in terms of section 18(1) of the Agrarian Services Act No. 58 of 1979 as amended by Act No. 4 of 1991. By the said application, they informed the Assistant Commissioner that the Petitioner as the sole tenant cultivator had been in arrears of rent payable for cultivating the aforesaid paddy lands since 1989/90 Maha season and

requested the Assistant Commissioner to recover the ground rent payable to the owners of the paddy lands (2V1).

[7] Sub-sections (1) and (2) of section 18 the Agrarian Services Act 58 of 1979 as amended by Act No. 4 of 1991 provide as follows:

*"(1) When the landlord informs the Commissioner that the tenant cultivator is in arrears of rent in respect of an extent of paddy land, the Commissioner shall cause an inquiry to be held by an Inquiry Officer and where the Inquiry Officer holds that the rent is in arrears and communicates the decision to the Commissioner, the Commissioner shall 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.*

*(2) A tenant cultivator who fails to pay the arrears of rent within the time specified shall be deemed to have forfeited his tenancy and shall vacate such extent on being ordered to do so by the Commissioner."*

[8] Consequent to the said application, the Assistant Commissioner appointed an Inquiring Officer (3<sup>rd</sup> Respondent) who conducted an inquiry in terms of section 18(1) of the Agrarian Services Act in the presence of the Petitioner and the Complainant on 15.03.1997 (pages 191-192 of the brief). The Inquiring Officer by his decision dated 26.03.1997 (P9) determined that the Petitioner is the tenant cultivator of the two paddy lands in question in extent of 15 ½ acres and that the Petitioner had failed to pay the ground rent in respect of the said paddy lands from 1989/90 Maha season till 1996/97 Maha season, in a sum of Rs. 338,400/- to the owners of the said paddy lands. The decision has specified the period from 1989/90 to 1996/97 with bushels of paddy for each cultivated season and the amount payable by the Petitioner to the owners of the paddy lands in question totalling Rs. 338,400/-

[9] The Assistant Commissioner (2<sup>nd</sup> Respondent) by letter dated 16.04.1997 communicated the said decision to the Petitioner (P10) and

directed the Petitioner to pay the said amount of Rs. 338,400/- in 2 instalments to the land owners Sri Kandasamy Temple Board of Trustees (the first instalment of Rs. 200,000/- to be paid on or before 01.06.1997 and the second instalment of Rs. 138,000/- on or before 15.07.1997). The 2<sup>nd</sup> Respondent has further informed the Petitioner that the failure to pay the said arrears of rent within the time specified would be deemed to have forfeited his tenancy.

#### **Grounds of challenge of the decision (P9 and Order (P10)**

[10] The Petitioner had challenged the said decision marked P9 and order marked P10 on the ground that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had acted ultra vires and without jurisdiction. The main two grounds relied on by the Petitioner to challenge the decision marked P9 and order marked P10 are as follows:

1. The Petitioner being a joint tenant cultivator of the paddy lands in question with his two brothers cannot be ordered to pay arrears of rent for the entire 15 ½ acres in terms of section 4 (1) of the Act, which has limited the maximum extent of the paddy land that can be cultivated by a tenant cultivator to 5 acres;
2. The Petitioner was not accorded a fair hearing by the 3<sup>rd</sup> Respondent and the proceedings before the 3<sup>rd</sup> Respondent was conducted in breach of rules of natural justice.

#### **Grounds for Invoking a Writ of Certiorari**

[11] A writ of certiorari will be available whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having a duty to act judicially,

1. Acts in excess or absence of their authority or
2. Acts in violation of natural justice; or

3. Where there is an error on the face of the proceedings.

**First ground of challenge of the the decision P9 and order P10**

[12] At the hearing, the learned President's Counsel for the Petitioner, Mr. Manohara de Silva submitted that the Petitioner is only one of the tenant cultivators of the paddy lands in dispute and sub-section 1 of section 4 of the Agrarian Services Act limits the right of a tenant cultivator to cultivate a paddy land to a maximum extent of 5 acres. The contention advanced by Mr. de Silva was that accordingly, the Petitioner being one of the tenant cultivators cannot be directed to pay the ground rent for more than 5 acres and therefore, the Inquiring Officer (3<sup>rd</sup> Respondent) and the Assistant Commissioner (2<sup>nd</sup> Respondent) had acted *ultra vires* and without jurisdiction.

[13] On the other hand, the submission of the learned President's Counsel for the 4<sup>th</sup> to 8<sup>th</sup> Respondents, Mr. Kariappa was that sub-section (1) only provides a protection to a tenant cultivator for a maximum extent of 5 acres, but it does not prohibit a tenant cultivator from cultivating the entire land as long as the owners of the paddy land permit him to do so and the rent is duly paid by the tenant cultivator to the owners in respect of the entire land. He further submitted that the Petitioner who is admittedly the sole tenant cultivator of the entire paddy lands in question and failed to pay the rent at least in respect of 1/3 of the paddy lands is not entitled to rely on the ceiling specified in sub-section (1) of the Act.

[14] In view of the aforesaid submissions, this Court is first invited to consider the following questions:

1. Has the Petitioner cultivated the paddy lands in question together with his two brothers as joint tenant cultivators in terms of the provisions of the Agrarian Services Act?

2. Is the Petitioner the sole tenant cultivator of the entire paddy lands in question in extent of 15 ½ acres and if so, has he failed to pay the ground rent to the owners of the paddy lands from 1989/90 Maha season to 1996/97 Maha season?
3. Has the Legislature in placing a ceiling of 5 acres in sub-section (1) of section 4 of the Agrarian Services Act No. 58 of 1979 only restricted the protection of the tenant cultivator to cultivate the maximum extent of a paddy land to 5 acres?
4. If the tenant cultivator relies on the concept of ceiling in subsection (1) of section 4, is he obliged to select the maximum extent specified in sub-section (1) and vacate the excess land in terms of sub-section 3 of section 4 of the Act?

#### **Ceiling in sub-section (1) of section 4 of the Agrarian Services Act**

[15] In view of the submissions of both Counsel, I shall first examine the scheme of section 4 of the Agrarian Services Act No. 58 of 1979 and consider whether the prohibition in sub-section (1) applies to the Petitioner in the present case as contended by Mr. de Silva. Section 4 of the Agrarian Services Act No. 58 of 1979 as amended by Act No. 4 of 1991 was to the following effect:

- (1) *The maximum extent of paddy land that could be cultivated by a tenant cultivator shall be five acres.*

*For the purpose of this section any paddy land cultivated by a spouse or a minor child below eighteen years of age, of a tenant cultivator shall be deemed to be paddy land cultivated by that tenant cultivator.*

- (2) *The Minister may, subject to the provisions of subsection (1) by Order published in the Gazette, determine the extent of paddy land that may be cultivated by a tenant cultivator in any district to which such Order relates:*

*Provided, however, that where the Commissioner is satisfied after due inquiry that a tenant cultivator is also an owner cultivator of any paddy land of not less than five acres in extent, the Commissioner may declare that such tenant cultivator shall not be entitled to his rights as a tenant cultivator under the provisions of this Act, and accordingly the provisions of subsections (3), (4), (5) and (6) of this section shall apply to such tenant cultivator.*

- (3) *The tenant cultivator shall, if he is in occupation of an extent of paddy land in excess of the extent specified in an Order under subsection (2), subject to the approval of the Commissioner, be entitled to select the extent of paddy land which he is entitled to cultivate, and shall vacate the balance extent on being ordered to do so by the Commissioner.*
- (4) *Where a tenant cultivator fails to comply with the provisions of subsection (3) he shall be evicted from the extent of paddy land in excess of the extent specified in the Order under subsection (2) and the provisions of section 6 shall apply to any such eviction.*
- (5) *On vacation of such extent by the tenant cultivator, the landlord shall, with the approval of the Commissioner-*
  - (a) *be entitled to cultivate such extent on such conditions as may be prescribed; or*
  - (b) *appoint one or more tenant cultivators for such extent within such period as may be prescribed.*

[16] The legislature has thus limited the maximum extent of paddy land that could be cultivated by a tenant cultivator to 5 acres. The submission of Mr. de Silva was that the concept of ceiling in sub-section (1) applies to the Petitioner who together with his two brothers cultivated the paddy lands in question as clearly evidenced by the Agricultural Lands Register which is filed of record.

[17] In this context, I shall proceed first to determine the question whether or not the Petitioner is a joint tenant cultivator of the entire paddy lands in question with his two brothers in terms of the provisions of the Agrarian Services Act No. 58 of 1979 as amended. Secondly, I shall consider the question whether the ceiling in subsection (1) prevents the 2<sup>nd</sup> and 3<sup>rd</sup>

Respondents from directing the Petitioner to pay the arrears of rent in respect of the paddy lands in question under section 18 (1) of the Act.

**Is the Petitioner a joint tenant cultivator or a sole tenant cultivator of the entire paddy lands in extent of 15 ½ acres?**

[18] It is useful to bear in mind the legal character of a “cultivator” as defined in section 68 of the Act No. 58 of 1979. It reads as follows:

*“cultivator” with reference to an extent of paddy land means any person, other than an Agrarian Services Committee, who by himself or by any member of his family, or jointly with any other person, carries out on such extent:-*

- (a) *two or more of the operations of ploughing, sowing and reaping; and*
- (b) *the operation of tending or watching the crop in each season during which paddy is cultivated on such extent.”*

[19] The Petitioner has admitted in paragraph 1 of the Petition dated 19.05.2003 that he was the sole tenant cultivator of two paddy lands in extent of 15 ½ acres from 1960. He has further admitted that the District Court of Kalmunai in Case bearing No. 19/Mics declared him as the sole tenant cultivator of the whole paddy lands in extent of 15 ½ acres (paragraph 3 of the Petition) and his landlord is the Mandur Sri Kandasamy Kovil of which the 4<sup>th</sup> to 8<sup>th</sup> Respondent are the Trustees.

[20] In support of his submission that the Petitioner and his two brothers are joint tenant cultivators of the two paddy lands in question, Mr. de Silva strongly relied on the entries made in the Agricultural Lands Register at page 112 of the brief. Mr de Silva submitted that the Agricultural Lands Register clearly demonstrates that there are 3 tenant cultivators on the lands in suit as names of Mohamed Thamby Sulaimalebbe and Mohamed Lebbe Thamykandu also appear together with the Petitioner on the Agricultural Lands Register. He further submitted that the Agricultural

Lands Register shall be regarded as evidence of the contents therein, under sub-section (3) of section 45 and as no Court has so far declared that the Agricultural Lands Register was wrong, it is wrong for the Court to examine the accuracy and correctness of such entries in such Register.

[21] Mr. Kariappa however, submitted that in the present case, the Petitioner is admittedly the sole tenant cultivator from 1969 and that he had successfully obtained a declaration from the District Court of Kalmunai to that effect and therefore, the Petitioner is estopped now from deviating from his own admission. He contended that the Agricultural Lands Register which had been amended contrary to the legal provisions laid down in the Agrarian Services Act No. 58 of 1979 as correctly decided by the Commissioner in his decision dated 02.12.1996 (R4 (a).

#### **Amendment of the Agricultural Lands Register marked P1 and P2**

[22] A perusal of the undated certified copy of the Amended Agricultural Lands Register (P1 and P2) at pages 111 and 112 of the brief reveals that the following names appear on the Register as tenant cultivators of the said two paddy lands in question:

1. Mohamed Thamby Sulaiman Lebbe;
2. Mohamed Thamby Uthumalebbe (Petitioner);
3. Mohamed Lebbe Thamykandu.

[23] It is necessary to consider whether the names of the Petitioner's two brothers that appear on the Agricultural Lands Register as joint tenant cultivators of the entire lands is conclusive evidence of the facts stated therein as it had not been declared void by a Court of Law as contended by Mr. de Silva. A perusal of the application made by Mohamed Thamby Sulaimalebbe and Mohamed Lebbe Thamykandu for the amendment of the Agricultural Lands Register on 22.01.1990 (R5/R6) reveals that the said

Mohamed Thamby Sulaimalebbe had sought an amendment in the Agricultural Lands Register on the basis that he became entitled to the paddy lands in question by way of a “Gift” and the evidence for the request is the “Deed”. It is manifest that the amendment was not sought on the ground that they together with the Petitioner cultivated the lands in suit as joint tenant cultivators of the Trustees.

[24] The document dated 12.08.1997 at page 96 of the brief indicates that the decision to change the Register had been made by the Agrarian Services Committee on 14.03.1991 and thus, the amendment in the Agricultural Lands Register had been made after the Agrarian Services (Amendment) Act No. 4 of 1991 came into force on 23.02.1991.

[25] Section 45 (2) of the Act No. 58 of 1979 was amended by Act No. 4 of 1991 by inserting immediately after subsection (2) of that section a new subsection as (2A). The said new subsection provides the procedure to be followed before any amendment in the Agricultural Lands Register is made. Section 2A was as follows:

“45 (2A) (a) *The register of agricultural land shall be-*

- (i) *amended as and when it becomes necessary so to do;*
- (ii) *revised once in every three years commencing from 1991;*
- (iii) *kept open for public inspection in the months of January and July every year.*

(b) *Any application to the Committee for the amendment of the register of agricultural lands by inclusion of the name of a new tenant cultivator in respect of any extent of paddy land shall be in writing and shall be accompanied by a letter from the landlord consenting to the registration of the applicant as the tenant cultivator of such extent”.*

[26] Thus, before a person’s name can be inserted in the Agricultural Lands Register as a new tenant cultivator under the Agrarian Services Act,

the application for the amendment of the register shall be accompanied by a letter from the landlord consenting to the registration of a new tenant cultivator. Where a person's name is inserted as tenant cultivator without the consent of the landlord in writing as required by section 45 (2A), the amendment made in the Agricultural Lands Register is of no force in law.

#### **Admissibility of an entry made in the Agricultural Lands Register**

[27] In this regard, it is apt to consider the legal provision in relation to the admissibility and conclusiveness of any name appeared in the Agricultural lands Register as a tenant cultivator. Section 45 (3) of the Agrarian Service Act No. 58 of 1979 was to the following effect:

*"(3) Any entry in the register which has been prepared or revised under the provisions of this section and which is for the time being in force shall be admissible in evidence and shall be prima facie evidence of the facts stated therein".*

[28] In *Dolawatta v. Gamage and Another* unreported decided on 27.09.85 (see- Annexure to the decision in *Herath v. Peter* (1989 2 Sri LR 326), Ranasinghe, J. (as he then was) observed at page 322 that:

*"Section 45(3) of the Agrarian Services Act of 1979 provided that an entry made in the register, maintained in terms of sub-section (1) of section 45 is "prima facie" evidence of the facts stated therein". The effect of an entry being declared to be "prima facie" of the facts set out therein is that it is "evidence which appears to be sufficient to establish the fact unless rebutted or overcome by other evidence" and "is not conclusive"-Sarkar, Evidence, 10 edt. p. 27. "it is evidence which if not balanced or outweighed by other evidence will suffice to establish a particular contention"-Halsbury 4th edt, Vol. 17, p. 22, Sec. 28.....*

*The entry in the said register would not, therefore, prevent the Plaintiff-Appellant from leading evidence to the contrary. It would be open to the Plaintiff-Appellant to satisfy the District Court, if the District Court has otherwise jurisdiction to adjudicate upon the Plaintiff's claim-by evidence that the 1st Defendant-Appellant is not*

*despite his resignation as such, in the law a “tenant cultivator” as set out in the aforesaid Act “*

[29] Ranasinghe, J. (as he then was) further cited the judgment of Samarakoon CJ in *Udugoda Jinawansa Tero v. Yatawara Piyarathana Thero* (S.C. appln.46/81, S.C. minute dated 5.4.82) wherein Samarakoon CJ., in *Undugoda Jinawansa Thero v. Yatawara Piyaratne Thero*, stated, in regard to the evidentiary value of an item of evidence which is considered "prima facie evidence", thus:

*"It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal... If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value. Evidence in rebuttal may be either oral or documentary or both. ... The Register is not the only evidence."*

[30] A similar view was expressed by Goonewardene J. in *Herath v. Peter (1989) 2 Sri LR 325* and *Dharnaratne v. Hewasundera* (1996) 1 Sri LR 220. In *Dharnaratne v. Hewasundera*, Kulatunga J. (supra) considered the legal effect of section 45(3) and held that any entry that appears in the Agricultural Lands Register as a tenant cultivator is only *prima facie* evidence of the facts stated therein but the said entry is rebuttable. Kulatunga J. at page 224 observed:

*"No doubt Marthelis's name appears in the agricultural lands register as “tenant cultivator” of the entire land: but in terms of S. 45 (3) of the Act, an entry in the register is only prima facie evidence of the facts stated therein. It means that the entry is rebuttable, and as pointed out, it has been established that at the time of the alleged eviction, Marthelis was a cultivator of only ¼ acre".*

[31] It is open to the 4<sup>th</sup> to 8<sup>th</sup> Respondents to displace the effect of *prima facie* evidence of the facts stated therein by offering further evidence of an inconsistent or contradictory nature. Thus, the 4<sup>th</sup> to 8<sup>th</sup> Respondents are

entitled to rebut the correctness of the entry stated in the Agricultural Lands Register and establish that the Petitioner's two brothers were not the joint tenant cultivators of the paddy lands in question.

[32] It is also open for the 4<sup>th</sup> to 8<sup>th</sup> Respondents to challenge the entry in the Register on the ground that the names of the Petitioner's brothers had been inserted in the Register as joint tenant cultivators without the written consent of the landlord as required by the provisions of the Agrarian Services Act.

#### **District Court of Kalmunai Case No. 19/Misc**

[33] It is an admitted fact that the Petitioner was declared to be the sole tenant cultivator of both lands, i.e. of 15 acres and 2 roods in issue and the possession of both paddy lands was delivered to him in the District Court of Kalmunai Case No. 19/Misc on 04.05.1987 (pages 127-131 and 145-146 of the brief). The communication sent by the Assistant Commissioner dated 23.03.1987 to the Registrar of the District Court of Kalmunai (R1 at page 125 of the brief) in respect of the said case further confirms that the Petitioner is the sole tenant cultivator of the paddy lands in question

[34] The appeal filed against the said judgment was dismissed by the Supreme Court on 08.06.1978 and the revision application filed against the District Court judgment was rejected by the Court of Appeal on 27.03.1996 (Vide- *Vannakar and Others v. Urthumalebbe* (1996) 2 Sri LR 73). This further confirms that the Petitioner is the sole tenant cultivator of the entire land in question.

[35] The Petitioner has pleaded in paragraphs 4 and 5 of the Petition however, that he filed the said District Court of Kalmunai case on behalf of his two brothers who were cultivating jointly with him and that although he was placed in possession of the entire extent of the paddy land, he only

cultivated a divided extent of 1/3 of the said paddy lands from Maha Season of 1989/1990.

[36] Mr.de Silva drew our attention to the principle of law that in a *rei vindicatio* action, even if the Plaintiff asked for a declaration of title to the property in suit as the sole owner, he is entitled to eject a trespasser even though he fails to establish that he is the sole owner provided however, he establishes that he is a co-owner. He submitted that the same principle applies here. His contention was that the Petitioner asked for a declaration from the District Court that he was the tenant cultivator and further prayed for an ejectment of the Trustees who wrongfully ejected the joint tenant cultivators from the paddy lands in question.

[37] In *Hariette v Pathmasiri* 1996 (1) Sri LR 358, S. N. Silva, J. (as he then was) held that our law recognizes the right of co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land because the owner of the undivided share has an interest in every part and parcel of the entire land. The principle of law that the right of a co-owner to sue a trespasser to have his title to an undivided share declared and for ejectment of a trespasser from the whole land applies upon proof that he is a co-owner of the whole land. But such was not the case formulated by the Petitioner in the District Court of Kalmunai. Admittedly, the District Court of Kalmunai case was filed by the Petitioner seeking a declaration that he is the sole tenant cultivator of the whole land and that he was wrongly deprived of possession of the said paddy lands.

[38] The Petitioner has not produced the Plaintiff filed in the District Court case to satisfy that the Petitioner at least pleaded that the Petitioner together with his two brothers cultivated the paddy lands in question.

Accordingly, the principle of law that has been recognized in the above-mentioned case will not help the Petitioner.

### **Previous Inquiries before the Assistant Commissioner**

[39] By letter dated 15.03.1996 (R3 at page 143 of the brief), the Trustees of the Temple had made an application to the Assistant Commissioner of Agrarian Services under section 4 of the Agrarian Services Act No. 58 of 1979 and sought an order to limit the extent of the land that can be cultivated by the Petitioner to 5 acres. Paragraph 3 of the said letter reads as follows:

*"The above said paddy fields were cultivated by one Mr. M. U. Uthumalebbe of Hospital Road of Samanthurai as the tenant cultivator".*

[40] The Petitioner, while objecting to the said application raised several preliminary objections and made an application to have his two brothers added as a party to the inquiry. (Vide- the Inquiry Report No. AM/ASA/PI/97 dated 02.12.1996 produced by the 4<sup>th</sup> to 8<sup>th</sup> Respondent in the High Court marked as R4 (134-135 of the brief). The Assistant Commissioner by order dated 02.12.1996 rejected all preliminary objections as well as the application made by the Respondent (the present Petitioner) to have his two brothers added as a party to the inquiry. The learned High Court Judge has referred to the findings of the Assistant Commissioner in rejecting the version of the Petitioner that his brothers are joint tenant cultivators.

[41] It would be important to refer to the following parts of the findings made by the Assistant Commissioner in his order dated 02.12.1996:

*"3- The complainant has stated that Mr. M. Uhtumalebbai is the tenant cultivator for both the said paddy fields. They have not stated, any others. It was declared that the said M. Uhtumalebbai is the only*

*tenant cultivator in the inquiry which was held earlier in this office by the Assistant Commissioner (Inquiry). It has not been established in terms of the provisions of the agrarian services act that they were the tenant cultivators.*

*.... It was revealed from the information I received and after inspecting the relevant document, the application made by M. Thambikkandu and M. Sulaimalebbai to register their names as the tenant cultivators were not in compliance with the circulars of the agrarian services department and with the agrarian services act as amended by No. 58 of 1979 and No. 04 of 1991. I have already brought this matter to the notice of Agrarian Services Committee concerned.*

- i. *It was not mentioned in the application made by Mr. Thambikkudu and M. Sulaimalebbai in 1990 to the agrarian Services Committee, Sammاثurai as the register their names as tenant cultivators. Two reasons stated in it for the Amendment of the register were "Gift" and also the proof of the same was stated as "DEED".*
- ii. *There is no evidence available, that the owners of the land were given notice about the inquiry when the application was taken up for inquiry.*
- iii. *It was decided by the committee on 14.08.1991 that the amendment to the paddy Land Register should be done only after the Land Owner's consent is received. This consent of the owners of the lands was not obtained either in writing or orally. This is very essential in terms of the Agrarian Services Act.*

[42] On the other hand, the application for the amendment of the Agricultural Lands Register had been made without notice to the owners of the paddy lands or with the consent of the owners in writing. Further, the inquiry before the Agrarian Services Committee had taken place without notice to the owners of the lands in suit as has been observed by the Assistant Commissioner (R4).

[43] Consequent to the decision of the Assistant Commissioner of Agrarian Services, the Divisional Officer of Agrarian Services Centre had also

decided on 12.08.1997 (page 96 of the brief) that the decision taken on 14.03.1991 to change the Agricultural Lands Register without the consent letters of the Temple Trustees was wrong and incorrect in terms of the amended section 4 of the Agrarian Services (Amendment) Act No. 04 of 1991.

[44] The Petitioner has not produced a single document either in the High Court or in this Court to establish that the amendment to the Agricultural Lands Register was made by the Agrarian Services Committee, Samantuirai with the written consent of the owners of the paddy lands in question. The Petitioner has not produced a single document along with his Petition filed in this Court to show that the Petitioner and his brothers cultivated the paddy lands in suit with the written consent of the owners of the paddy lands in question.

[45] It is manifest that the amendment in the Agricultural Lands Register had been made by the Agrarian Services Committee without the written consent of the owners of the paddy lands in suit in contravention of section 45 (2A) (a) Act.

[46] The proceedings before the Inquiring Officer on 25.03.1997 further reveals that the Petitioner has admitted that he is the tenant cultivator of the paddy lands in question from 1960 and paid the rental at the rate of Rs. 1500/- to one of the Trustees called Kandia and that thereafter, he continued to cultivate the paddy lands in question from 1989 without rent of the paddy lands being paid to the Trustees (Vide- pages 192 of the brief).

[47] On the facts, the 4<sup>th</sup> to 8<sup>th</sup> Respondents have displaced the effect of the prima facie evidence by offering credible evidence of an inconsistent and contradictory nature of the Agricultural Lands Register and established that the said two brothers of the Petitioner, namely, Thambikkandu and M.

Sulaimalebbai are not the joint tenant cultivators of the paddy lands in question within the meaning of section 68 of the Act.

[48] On the facts, the 4<sup>th</sup> to 8<sup>th</sup> Respondents have established that the Petitioner is the sole tenant cultivator of the entire paddy lands in question and that the Petitioner has failed to pay the ground rent to the Trustees from 1989/90 Maha season to 1996/97 Maha season. As such, the Trustees were entitled to make an application under section 18 (1) of the Act and seek an order from the Commissioner directing the Petitioner to pay the arrears of rent due to them from 1989/90 Maha Season as set out in P9 and P10.

#### **Applicability of the ceiling in sub-section 1 to the Petitioner**

[49] Mr. de Silva, however, submitted that as the maximum extent of the paddy land that can be cultivated by a tenant cultivator is 5 acres in terms of sub-section (1) of section 4, the decision P9 and order P10 cannot stand in law. His contention was that the concept of ceiling in sub-section (1) should be given a strict interpretation and thus, the Petitioner is only entitled to pay the rent in respect of the maximum extent of 5 acres and no more. If his contention is correct, the concept of ceiling in sub-section (1), cannot travel beyond the plain words in sub-section (1) whether or not the Petitioner is in occupation of an extent of paddy land in excess of the maximum extent specified in sub-section (1). In such a situation, the Courts are debarred from interpreting the legislative intent of the scheme of section 4 in its entirety in the context of the object and purpose, the legislature had in mind in enacting section 4 as evidenced from its preamble.

#### **Legislative Intent and the Scheme of Section 4**

[50] In this context, the main issue revolves on the legislative intent of the concept of ceiling in sub-section (1) of section 4 of the Agrarian Services

Act No. 58 of 1979 as amended. The Agrarian Services Act is a social and beneficial legislation which was created to provide reliefs to tenant cultivators and landlords through the proper utilization and management of agricultural lands in accordance with agricultural policies of the State.

[51] The preamble to the Act recognises one of the beneficial purposes of the Act namely, “.....to provide security of tenure to tenant cultivators of paddy lands, to specify the rent payable by tenant cultivators to landlords, to provide for maximum productivity of paddy and other agricultural lands through the proper use and management of agricultural crops and livestock....”

[52] A statute which confers a benefit on individuals or a class of persons by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations is a beneficial legislation (Bindra's Interpretation of Statutes 10<sup>th</sup> Ed, p. 341). Although a section of a statute has to be interpreted according to its plain words and without doing violence to the language used by the legislature, the beneficial piece of legislation should be interpreted in a purposive manner which would effectuate the object of the welfare or beneficial legislation (*Nagpur District Central Co-operative Bank v. State of Maharashtra*, 1987 Mah IJ 593). Thus, a welfare or beneficial legislation should be interpreted in such a way that it advances the object and the purpose of the legislation and gives it a full meaning and effect, so that the ultimate social objective is achieved (*Workmen of Indian Standards Institution v. Management of Indian Standards Institution*, (1976)1 LJ 33,39 (SC)). It becomes the duty of the court to interpret a provision, especially a welfare or beneficial statute by giving it a wider meaning rather than a restrictive meaning. It is well-settled canon of construction that in construing the

provision of beneficial enactments, the court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory (*Chinnamar Kathian alias Muthu Gounder v. Ayyavoo alias Periana Gounder* AIR 1982 SC 137).

[53] Thus, a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intent underlying its enactment (supra). An interpretation of a section that advances the object and policy of an Act is more beneficial to the tenant cultivator and the landlord, has to be preferred ( *Color-Chem Ltd v All Alaspurkar & Others* (1998) 3 SCC 192. The provisions of such an Act cannot be interpreted in such a manner as to bring about a result, so plainly contrary to the object and the policy of the legislation, otherwise the intention of the legislation would be defeated (*Andhra Handloom Weavers' Co-op Society v State of Andhra Pradesh* AIR 1964 AP 363-64).

[54] The legislative intent of the Agrarian Services Act in introducing the concept of ceiling in sub-section (1) cannot be gathered by adopting a strict and restrictive interpretation to its words. The legislative intent should be gathered by reading section 4 in its entirety, the context object and purpose of the ceiling and its operation within the overall scheme of section 4 enacted by the legislature.

[55] Sub-section (1) limits the maximum extent of paddy land that can be cultivated by a tenant cultivator to 5 acres, while sub-section (2) empowers the Minister to further limit the extent of paddy land that can be cultivated by a tenant cultivator. The proviso to sub-section (2) of section 4 deals with a specific class of cases, namely that of tenant cultivators who are also owner cultivators of paddy land of not less than 5 acres in extent. In such case, the proviso permits the Commissioner, after due inquiry, to make

order that, if a tenant cultivator is also the owner cultivator of not less than 5 acres of paddy land, he shall not be entitled to his rights as a tenant cultivator under the provisions of the Act (*Ismalebbe v. Assistant Commissioner of Agrarian Services* (1991) 2 Sri LR 334 at. 334). Where the Commissioner makes such a declaration, the provisions of sub-sections 3, 4, 5 and 6 shall apply to such tenant cultivator. It is not in dispute that sub-section 2 has no application to the present case.

[56] With the introduction of the concept of the ceiling in sub-section (1), the Legislature has limited the protection of the tenant cultivator to cultivate a paddy land to the maximum extent of 5 acres. The ceiling in sub-section (1) recognises the intention of the legislature in making available a maximum extent of 5 acres to a tenant cultivator who otherwise would have no access to cultivating paddy land. It also seeks to ensure that no tenant cultivator should bite off more than he could chew (*Ismalebbe v Assistant Commissioner of Agrarian Services* (supra, at 340).

[57] Sub-section (3) is intended to ensure that the proper working of the ceiling in case where the tenant cultivator misuses the protection afforded to him and continues to occupy an extent of paddy land in excess of the maximum extent specified in sub-section (1). Sub-section (3) reads as follows:

*"The tenant cultivator shall, if he is in occupation of an extent of paddy land in excess of the extent specified in an order under subsection 2, subject to the approval of the Commissioner, be permitted to select the extent of paddy land which he is entitled to cultivate, and shall vacate the balance extent on being ordered to do so by the Commissioner."*

[58] Thus, if the tenant cultivator is in occupation of an extent of land in excess of the maximum extent specified in sub-section (1) he is obliged to

select the extent of paddy land which he is entitled to cultivate and vacate the balance extent on being ordered to do so by the Commissioner.

[59] The Courts cannot disregard the legislative intent of sub-section (3) when a tenant cultivator is in occupation of an extent of a paddy land in excess of the maximum of 5 acres specified in sub-section (1). The overall object and policy of the legislature in section 4 is not only for the benefit of the tenant cultivator, but also for the benefit of the owners of the paddy land. Sub-section (3) of section 4 in my view, has struck a balance between the tenant cultivator who is in occupation of an extent of paddy land in excess of the extent specified in sub-section (1) and the right of the owner to be entitled to cultivate the balance extent subject to the approval of the Commissioner.

[60] Sub-section (3) reflects the legislature's intent by equally providing a relief to the owners of the paddy lands to utilize the balance extent that is released by the tenant after the tenant cultivator having selected his 5 acres and vacated the balance extent on being ordered to do so by the Commissioner. It seems that sub-section (3) is intended to govern the ceiling in sub-section (1) where the tenant cultivator fails to select his maximum extent of 5 acres and vacates the balance extent, but continues to occupy the whole paddy land in defeating the scheme of section 4 intended by the legislature. In *Ismalebbe v. Assistant Commissioner of Agrarian Services* (supra), the issue was whether the proviso applies to subsection (2) only having regard to the fact that it is placed immediately after sub-section (2) or whether the proviso applied to sub-section (1) as well. In other words, the issue was whether the proviso to sub-section (2) applied only where the Minister determines the extent of paddy land cultivable by a tenant cultivator under sub-section (2.). Their Lordships of the Supreme Court held that the proviso stands by itself, regardless of its position and

the proviso to sub-section (2) is intended to govern the contents of both subsections (1) and (2).

[61] In the present case, no material is available that any specific order was made by the Minister so far in terms of sub-section (2) applicable to the Ampara District in which the disputed paddy land is situated or in any district in the Island. The question then arises whether sub-section (3) brings into force solely upon the Minister making an order in terms of sub-section (2) and if so, whether, in the absence of an order made by the Minister, the operation of sub-section (3) is of no force. If the position is that sub-section (3) applies only to a case of a tenant cultivator in a district to which an order made by the Minister relates as contemplated in sub-section (2), the concept of the ceiling and the legislative object in section 4 including the mechanism set out in sub-section (3) will be meaningless.

[62] Further, if that position is correct, clearly the tenant cultivator who occupies the entire land in excess of the maximum extent of 5 acres is not obliged to select the maximum extent of 5 acres, vacate the excess land and pay the arrears of rent in respect of the entire land of which he is in occupation unless an order is made by the Minister in any district as contemplated by sub-section (2). If that position is correct, the owners will never be able to utilize the excess land and demand the arrears of rent in respect of the entire land and the Commissioner cannot give effect to sub-section (3), unless an order is made by the Minister in any district as contemplated by sub-section (2).

[63] To accept such an absurd rationale is totally against the legislative intent of a beneficial piece of legislation which is not intended to justify a different treatment to beneficiaries. As stated by Dankwert L.J. stated at page 887 in *Artemion v. Procopioa* (1966) Q.B.D. 877:

*"An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. In the present subsection the result contended for would be quite irrelevant to the mischief which the statutory provision was intended to meet, namely, the prevention of exploitation of tenants by speculators. The provision cannot have been intended to defeat landlords who have been landlords of the holding for a long period, even if their title has been renewed within the last five years. There is a perfectly reasonable construction available which avoids such an unfortunate result."*

[64] The scheme introduced by section 4 of the Agrarian Services Act is not only for the benefit of tenant cultivators but also for the benefit of the owners. Sub-section (3) has clearly struck a balance to ensure that the ceiling in sub-section (1) is effectually implemented for the benefit of both the tenant cultivator and the owners. In my view the sub-section (1) should be read together with sub-section (3) if the tenant cultivator is in occupation of an extent of paddy land in excess of the extent specified in sub-section (1) irrespective of whether a Minister has made an order in terms of sub-section (2).

[65] If the contention is that sub-section (3) brings into force upon the Minister making an order in terms of sub-section (2), the Commissioner would be barred in giving effect to the legislative intent in sub-section (3) and the tenant cultivator would continue to occupy the whole land without selecting his maximum extent and vacating the excess land. Sub-section (3) has provided the answer in safeguarding the rights of both the tenant cultivator and the owners and giving the power to the Commissioner to give effect to the intention of legislature in introducing the ceiling in sub-section (1) where the tenant cultivator is in occupation of an extent of land in excess of the extent specified in sub-section (1).

[66] The Petitioner who occupies and cultivates the entire paddy land in excess of the extent specified in sub-section (1) and fails to pay the arrears

of rent to the landlord for more than 5 consecutive seasons cannot hide behind sub-section (1) and complain that the Commissioner had acted ultra vires in directing him to pay the arrears of rent for more than 5 acres unless he selects the maximum extent of 5 acres and vacates the excess land with the approval of the Commissioner.

[67] It seems that the 4<sup>th</sup> to 8<sup>th</sup> Respondents had made an application to the Commissioner under section 4 (3) of the Act seeking an order directing the Petitioner to vacate the excess land but the Petitioner had objected to the said application and raised several preliminary objections. The Petitioner further made an application to add his two brothers on the basis that they are also tenant cultivators. The Commissioner had refused the application to add the Petitioner's brothers and fixed the matter for inquiry. (R4 (a)). The Petitioner did not challenge the said decision of the Commissioner and thus, that decision remains unchallenged. I am however, unable to find any document in the record to ascertain whether a final decision had been taken by the Assistant Commissioner or whether the said inquiry was abandoned or the matter was settled before the Commissioner.

[68] The decisions challenged by the Petitioner only relate to the arrears of rent payable by the Petitioner to the owners from 1989/90 Maha season to 1996/97 Maha season under section 18 (1) of the Act. The Petitioner has admitted at the inquiry held under section 18 (1) that he cultivated the entire paddy land in question up to the date of the inquiry but failed to pay the rent during the relevant period. His subsequent payment made consequent to the settlement in case bearing No. 6 of 99 confirms his own evidence at the inquiry that the Petitioner had failed to pay the rent to the owners from 1989/90 Maha season to 1996/97 Maha season.

[69] The Commissioner had given effect to the legislative intent in section 18 (1) of the Act and thus, the Commissioner was within his authority

under section 18 (1) directing the Petitioner to pay the arrears of rent for the relevant period and the Petitioner cannot complain that the Commissioner had acted ultra vires and without jurisdiction.

### **Second ground of challenge**

**Has the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents committed any infringement of the rules of Natural Justice?**

[70] The Petitioner has further challenged the determination of the 3<sup>rd</sup> Respondent on the ground that the proceedings before the 3<sup>rd</sup> Respondent were conducted in breach of rules of natural justice. The Petitioner has complained in the Petition that:

- a. As the proceedings before the 3<sup>rd</sup> Respondent were conducted in Sinhala language, the Petitioner protested and made an application for a postponement to enable him to appear through an Attorney-at-law on the next date. The 3<sup>rd</sup> Respondent failed to record his protest or the application;
- b. The Officer who translated the proceedings into Sinhala language struggled to articulate the interpretation and the 3<sup>rd</sup> Respondent did not grant his request for a postponement to obtain the services of a lawyer;
- c. By letter dated 26.03.1997 addressed to the 2<sup>nd</sup> Respondent, the Petitioner protested against the said inquiry and requested another inquiry to be held, but the said request was not considered by the 2<sup>nd</sup> Respondent; and
- d. The Petitioner's two brothers were not summoned for the inquiry despite them being registered as tenant cultivators of the said paddy lands.

[71] It is settled law that the failure to follow the fundamental rules of procedure that becomes indispensable in the administration of justice is intrinsically interconnected to the outcome of the action and such failure will render the decision *ultra vires*. The two important rules of natural justice are:

1. Listen to both sides before arriving at a decision (*audi alteram partem*):
2. No one should be a judge in his own cause or rule against bias (*nemo debet esse judex in propria Causa*)

[72] The question whether the requirements of natural justice have been met with the procedure adopted in any given case depends to a great extent on the facts and circumstances of the case in point (*University of Ceylon v. Fernando* (1960) 61 N.L.R. 505). The requirements of natural justice must however, depend upon the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth (*Russel v Duke of Norfolk* (1949) 1 ALL ER 109, 118).

[73] In *Byrne v. Kinematograph Renters Society Ltd* (1958) 2 ALL ER 579, Harma J. said:

*"First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, the tribunal should act in good faith. I do not think that there really is anything more".*

[74] What, then, are the requirements of natural justice in a case of this kind? It is necessary to consider whether the following elements of the rule of *audi alteram partem*:

1. the right to know the nature of the charges made against him;
2. the right to be given an opportunity to present his case;

3. the right to legal representation;
4. the right to cross examine and
5. the right to know the reasons for the decision.

#### **Right to have notice of the charges made against him**

[75] To constitute a fair hearing, the most important element is that the person accused should know the nature of the charges made against him and that he should be given an opportunity to state his case (*University of Ceylon v. Fernando* (supra)). The object of notice is that an opportunity is provided to the person so that he can equip himself to defend his case. Obviously, the requirement that a person be given an opportunity to be heard is not met by simply serving on him notice of the time and place at which a hearing is to take place. Thus, unless a person knows what kind of case he will have to meet, he is not, in any real sense of the words, being given an opportunity to be heard (*R. v. North: Ex Parte Oakey* (1927) 1 K. B. 49 and Edward I. Sykes, Cases and Materials on Administrative Law, 4<sup>th</sup> Ed. p. 208).

[76] In the present case, the Petitioner has admitted that he was summoned to attend an inquiry and accordingly, the Petitioner had attended the said inquiry held on 25.03.1997 (paragraph 9 of the Petition). By letter dated 04.03.1997 marked P5 (page 115 of the brief), the 2<sup>nd</sup> Respondent had clearly informed the Petitioner in Tamil language that (i) a complaint had been made by the Trustees of the Kandasamy Temple that ground rent had not been paid in respect of Simira Vayal 8 acres and Vayal 7 acres 2 perches from the 1989/90 Maha season to 1995/96 by the Petitioner; and (ii) an inquiry into the said complaint will be held under section 18(1) of the Agrarian Services Act (see-caption) in the Office on 25.03.1997 at 11.00 a.m. in the morning. By the said letter, the Petitioner was requested to be present on that occasion without fail.

[77] It is crystal clear that the Petitioner had been informed of the nature of the allegation made by the Trustees against him in Tamil language together with the nature of the extent of the paddy lands in respect of which the Petitioner had failed to pay, the period of non-payment of the rent and the section under which the inquiry will be held against him. Accordingly, the Petitioner had been adequately informed of the charges made against him by the Trustees of the Temple, together with all necessary information to enable him to prepare his defence.

**The right to be given a reasonable opportunity to present one's case and legal representation at the inquiry**

[78] The Petitioner has complained that he sought a postponement of the inquiry to enable him to be defended by a lawyer, but the Inquiring Officer proceeded with the inquiry without giving an opportunity to be represented by a lawyer. He has further complained that the Inquiring Officer wrongfully failed to record his request and proceeded to hear the evidence, ignoring his right to be represented by a lawyer. (Vide-letter dated 26.03.1997 addressed to the 2<sup>nd</sup> Respondent marked P7- page 109 of the brief).

[79] In regard to legal representation in administrative inquiries, the courts have held that the legal representation is not available in administrative proceedings as of a right but the tribunal has a discretion to grant legal representation (*R. Board of Visitors of H.M. Prison, the Maze, ex. p. Hone* (1988) 1 All ER 321. A similar view was taken in *R. v. Secretary of State for the Home Department, ex. p. Tarrant* (1985) Q.B. 251). In *Pett v. Greyhound Racing Association Ltd.* (No. 2) {11} Lyell, J. said:

*"I find it difficult to say that legal representation before a tribunal is an elementary feature of the fair dispensation of justice".*

[80] Lord Denning in *Enderby Town Football Club v. Football Association Ltd.* [1971] 1 All E.R. 215, 218 stated:

*"Is a party who is charged before a domestic tribunal entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party who has no absolute right to be legally represented. It is a matter for the discretion of the tribunal. They are masters of their own procedure; and if they in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere."*

[81] In *R v. Secretary of State for the Home Department, ex. p. Tarrant* (supra) the Court while re-affirming the said position stated that although a prisoner appearing before a board of visitors in a disciplinary charge was not entitled as of right to have legal representation or the assistance of a friend or advisor, as a matter of natural justice, a board of visitors had a discretion to grant such representation or assistance before it. The court spelt the considerations that should be taken into account in exercising the discretion as follows:

*"When exercising the discretion to allow legal representation or the assistance of a friend or advisor, a board of visitors should first bear in mind the overriding obligation under Rule 49 (2) of the 1964 tries 'to ensure that a prisoner is given a full opportunity...of presenting his...case' and also take into account, inter alia (1) the seriousness of the charge and the potential penalty (2) whether any points of law are likely to arise (3) a prisoner's capacity to present his own case (4) procedural difficulties arising from the fact that a prisoner awaiting adjudication before a board is normally kept apart from other prisoners and may therefore be inhibited in the preparation of his defence, and the difficulty for some prisoners of cross-examining witnesses particularly expert witnesses (5) the need for reasonable speed in making an adjudication, (6) the need for fairness as between persons or as between prisoners and prison-officers."*

[82] The nature and character of the *audi alteram partem* maxim and its flexibility in operation was succinctly explained by Lord Loreburn, L.C.

in the celebrated judgment in *Board of Education v. Rice* 11911] A.C. 179. 182 as follows:

*"In such a case the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."*

[83] A similar view was taken by Lord Jenkins in *The University of Ceylon v. Fernando* (supra) at page 513:

*"It appeared to Their Lordships that Lord Loreburn's much quoted statement in *Board of Education v. Rice* (supra) still affords as good a general definition as any of the nature of and limits upon the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Lord Haldane in the case of *L. C. B. v. Arlidge*, -[1915] A.C. 120. 132 where he cites it with approval in the following words;*

*"I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice*, he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in anyway it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."*

[84] On the question of legal representation, Sharvananda C.J. held in *Chulasubdra de Silva v. University of Colombo* [1986] 2 Sri L.R. 288 that

there is no right to legal representation, but this may be allowed at the discretion of the tribunal. Sharvananda C.J. stated at page 306:

*"A University student appearing before an Examination Committee on a charge of having committed an examination offence is not entitled as of right to have legal representation or the assistance of a friend or advisor. But the Committee may, in its discretion, allow the student to avail himself of such assistance. I am unable to accept the argument that natural justice demands that in the case of inquiries conducted by a domestic tribunal like the Examination Committee against an erring student, the student should be allowed to be represented by any other person. Generally, the issues at such inquiries are simple and involve straightforward questions of fact and the student is quite competent to handle them".*

[85] The letter calling upon the Petitioner to attend an inquiry under section 18 (1) together with the nature of the charges made against him had been sent on 04.03.1997 and the inquiry was held on 25.03.1997. The Petitioner has admitted the receipt of the said letter and that he attended the said inquiry on 25.03.1997. The record, however, does not indicate that any request was made by the Petitioner at the inquiry for any legal representation or cross examination of the witness called by the owners of the paddy lands.

[86] Nevertheless, the summons dated 05.03.1997 sent to the Petitioner by the 2<sup>nd</sup> Respondent was not a sudden and unexpected summon to appear before the Agrarian Services Office for an inquiry. The Petitioner is not an illiterate person. The Petitioner had attended at several inquiries held at the Office of the 2<sup>nd</sup> Respondent prior to the inquiry was held on 25.03.1997. The record bears testimony to the fact that the Petitioner is a seasoned person who had participated in a number of inquiries before the Commissioner with or without legal representation (see- page 134 of the brief) and addressed several letters to the Commissioner (P7 at page 109).

The Petitioner was the sole Plaintiff in the D.C. Kalmunai Case bearing No. 19/MICS and Respondent in the Appeal filed in the Supreme Court and the Court of Appeal.

[87] Under such circumstances, the Petitioner who had notice of the nature of the charges made against him was well aware that the nature of the inquiry to be conducted by the Inquiring Officer and the evidence given in Tamil language will be translated into Sinhala by the Translators in the Office of the 2<sup>nd</sup> Respondent. The Petitioner had adequate time (21 days) to prepare for his defence and make arrangements to retain a lawyer as he had previously done.

[88] The Petitioner was well aware that on 02.12.1996 (R4 (a), the Commissioner had decided that his brothers are not the tenant cultivators of the paddy lands in question. The Petitioner in my view had ample time to retain a lawyer and attend the inquiry held on 25.03.1997. The Petitioner's complaint that the Inquiring Officer failed to grant a postponement for the inquiry in my view, is not credible. The Petitioner by his own admission had attended the inquiry without the service of a lawyer, participated in the inquiry and given evidence on oath and presented his case and thus, he is not entitled to complain that there was a breach of the principle of natural justice for the failure of the Inquiring Officer to postpone the inquiry to enable him to retain a lawyer.

[89] The important question, however, is whether the Petitioner was given a full and reasonable opportunity for stating his own case and given a full and complete hearing by the Inquiring Officer and explaining his views freely before the Inquiring Officer. It would be apt at this stage to refer to the following statement made by Sharvananda C.J. in *Chulasubadra v. University of Colombo* (supra) in regard to the distinction between the

rules of procedure that govern in a court of law and the reasonable procedure to be adopted by a tribunal exercising quasi-judicial functions;

*"A tribunal like the Examination Committee exercising quasi-judicial functions is not a court and therefore is not bound to follow the procedure prescribed for actions in courts nor is it bound by strict rules of evidence. It can, unlike a court obtain all information material to the issues under inquiry from all sources and through all channels, without being lettered by rules of procedure which govern proceedings in the courts. Where its procedure is not regulated by statute, it is free to adopt a procedure of its own, so long as it conforms to the principles of natural justice. It is equally free to receive evidence from whatever source provided it is logically probative. The only obligation which the law casts on it is that it should not act on any information which it may receive unless it is put to the party against whom it is to be used and give him a fair opportunity to explain or refute it".*

[90] The Petitioner complains that the Officer who translated his evidence struggled to translate his evidence properly into Sinhala and alleges that it was a breach of the principle of natural justice. In the present case, one of the Trustees of the Kandasamy Temple had given evidence on oath and stated that the Petitioner being the sole tenant cultivator of the entire paddy lands in question had failed to pay the ground rent from 1989/90 Maha season.

[91] The Petitioner has admitted in his Petition that the proceedings conducted in Tamil language were translated into Sinhala by a Translator. The *audi alteram partem* rule does not generally require that the witness who had given evidence against the other party should be tendered to him for cross examination unless he requests or demands for cross examination (*University of Ceylon v. Fernando* (supra) and *Chulasubadra de Silva v. University of Colombo* (supra)). No complaint had been made by the Petitioner in the Petition that he requested or demanded for cross

examination or that his request for cross examination was turned down by the Inquiring Officer.

[92] Admitedly, the Petitioner had given evidence in Tamil language and his evidence had been translated into Sinhala by a Translator. The record indicates that he had been given adequate opportunity to present his case and put forward his defence. His evidence given on oath was that he was the tenant cultivator of the entire land from 1960 and thereafter from 1989 he cultivated the paddy lands in question up to the time of the inquiry. His evidence in chief and cross examination had been recorded by the Inquiring Officer.

[93] Apart from the Petitioner's mere complaint, there is no sufficient material to come to a finding that the evidence given by the Petitioner was wrongfully recorded by the Inquiring Officer or that the Inquiring Officer had caused any disadvantage to the Petitioner or committed any infringement of the rules of natural justice. I hold that the Petitioner had been given a reasonable opportunity for presenting his own case and had a full and complete hearing before the Inquiring Officer who had sufficiently complied with the rules of natural justice.

#### **Right to know the reasons for the decision**

[94] The decision of the Inquiry Officer dated 26.03.1997 (P9) and the information of the decision dated 16.04.1997 (P10) clearly provide the reasons for the non-payment of a total sum of Rs. 338,400/- for the period of 1989/90 Maha season till 1996/97 Maha season by the Petitioner. The calculation had been made according to the Gazette No. 709/6 dated 08.04.1992 and thus, arrears of rent had become due in terms of the provisions of section 18 (1) of the Act. The decision marked P9 specifically provides the details of the non-payment of the rent for each season from

1989/90 Maha season to 1996/97 Maha season and the said decision with reasons had been communicated to the Petitioner by P10.

[95] For those reasons, I hold that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have not committed any infringement of the rules of natural justice and accordingly, there is no merit in the argument that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had acted *ultra vires* and without jurisdiction.

#### **Effect of the previous Revision Application**

[96] At the hearing Mr. Kariappa submitted that the Petitioner is not entitled to maintain this revision/restitutio in integrum application as the Petitioner had already invoked the revisionary jurisdiction of the Court of Appeal in respect of the same order made by the High Court and the Court of Appeal had already given some relief in the first revision application bearing No. 6 of 1999 filed by the same Petitioner. Mr. de Silva, however, submitted that the Petitioner first filed an appeal against the order of the High Court dated 30.09.1998 and thereafter, the Petitioner was compelled to file a revision application bearing No. 6/99 when the 2<sup>nd</sup> Respondent had moved the Magistrate's Court of Kalmunai to recover the possession of the paddy lands in question (pages 144 -147, 163-165 of the brief).

[97] Mr. de Silva further submitted that as there was an imminent threat of the Petitioner being evicted consequent to the said Magistrate's Court proceedings, the Petitioner filed a revision application and the said case was subsequently dismissed consequent to the Petitioner agreeing to settle all arrears of rent in respect of the entire paddy land outstanding from 1989 to 1997. He submitted, however, that both parties agreed that their rights would be determined on the connected appeal which was only dismissed on a technical ground and not on the merits.

[98] It is not in dispute that the Petitioner filed the revision application bearing No. 6/99 while the appeal bearing No. 1/99 was pending and the said revision application was settled between the parties on the following terms (X3):

- 1. Petitioner will deposit the sum of money stated in the order of the Additional Assistant Commissioner of Agrarian Services, Ampara (P9) amounting to Rs. 338,400/- less Rs. 100,000/- in M. C. Kalmunai Case No. 13819/98. The 4th to 8th Respondents who are the trustees of the temple are entitled to withdraw this entire amount of Rs. 338,400/- (i.e. inclusive of Rs. 100,000/- deposited by Order of this Court dated dated 07.07.1999;*
- 2. Further, the Petitioner is entitled to deposit to the Credit of the trustees the yearly/Seasonal rent for the cultivation of this land, until this dispute is resolved by the Court.*

*The above settlement will be without prejudice to the rights of either parties in the pending Appeal No. 1/99. In view of the above settlement, application for revision is pro forma dismissed without costs.*

[99] At the said appeal, a preliminary objection was raised by the 4<sup>th</sup> to 8<sup>th</sup> Respondents that the appeal is not properly constituted as the appellant had not lodged the notice of appeal in the High Court within a period of 14 days from the date of the order appealed. The Court of Appeal by order dated 28.01.2003 upheld the preliminary objection and dismissed the appeal (X5). The Petitioner had filed a special leave to appeal against the said order of the Court of Appeal but the said special leave to appeal application had been withdrawn in view of the present revision application filed by the Petitioner in the Court of Appeal (vide- page 4 of the written submissions filed on behalf of the Petitioner).

[100] A perusal of the settlement entered in the previous revision application bearing No. 6/99 reveals that the said revision application was dismissed when the Petitioner agreeing to deposit the arrears of rent for the

entire period and the parties agreeing that the settlement will be without prejudice to the rights of the parties in the pending appeal bearing No. 1/99. The said appeal was dismissed on a technical ground and not on the merits and as the Petitioner had no other remedy to seek a determination of his rights, the Petitioner had filed the present revision application.

[101] In *Perera v. Muthalib* 45 NLR 412, Soertsz J. set out the revisionary powers of the former Supreme Court and held that revisionary powers of the Supreme Court are not limited to those cases in which appeal lies or in which no appeal has been taken for some reason. Soertsz, J. further stated at page 413 that the Court would exercise revisionary powers where there has been a miscarriage of justice owing to the violation of a fundamental rule of judicial procedure, but that this power would be exercised only when a strong case is made out amounting to a positive miscarriage of justice. Even though the Court has the power to act in revision whether an appeal has been taken or not, such powers, thus, would be exercised only in exceptional circumstances (*Thilagaratnam v. Edirisinghe* (1982 (1) Sri LR 56).

[102] It is to be noted that the decisions sought to be challenged by way of writ jurisdiction was only confined to the decision (P9) and order (P10) directing the Petitioner to pay the ground rent in a sum of Rs. 338,4000/-. There is no order whatsoever by the Commissioner for the ejection of the Petitioner as the tenant cultivator of the paddy lands in question.

[103] Admittedly, the petitioner has not paid the ground rent for the whole extent of the paddy lands in question from 1989/90 Maha season up to the date of the complaint made by the Trustees to the Commissioner. The settlement reached in Case bearing No. 6/99 also confirms the fact that he had not paid at least 1/3 of the rent from 1989/90 Maha season to the Trustees.

[104] I hold that the Petitioner has failed to make out a strong case amounting to a positive miscarriage of justice owing to a fundamental rule of natural justice in making the decision marked P9 and order marked P10 or fundamental rule of procedure in making the order dated 30.09.1998 being violated. On the facts and circumstances of the case, I hold that there is no any illegality of the findings made by the 2<sup>nd</sup> or 3<sup>rd</sup> Respondents or the learned High Court Judge on 30.09.1998

#### **Misrepresentation of Material facts**

[105] The learned State Counsel brought to our attention that the Petitioner had suppressed material facts which he ought to have disclosed in the High Court writ application as correctly observed by the learned High Court Judge in his order dated 30.09.1998. The 4<sup>th</sup> to 8<sup>th</sup> Respondents had produced the documents marked R1 to R4(a) in support of their contention *inter alia*, that the Petitioner had deliberately suppressed material documents from the Court and hence, the Petitioner grossly lacks *uberima fides*.

[106] I find that the Petitioner had suppressed from the High Court the letter of the Commissioner of Agrarian Services (Inquiries) dated 23.03.1987 marked R1 that was addressed to the District Court of Kalmunai stating that the Petitioner is the lawful tenant cultivator of the two paddy lands in question.

[107] The Petitioner had failed to disclose in the High Court application about the inquiry held by the Commissioner on 02.12.1996 and the decision (R4 (a) that was held to decide the correctness of the two entries that appeared on the Agricultural Lands Register (P1 and P2). By the said order, the Commissioner has decided that the Petitioner is the tenant

cultivator of the entire land and the two brothers are not the tenant cultivators.

[108] A party applying for a prerogative writ is under a duty to the Court to disclose all material facts within his knowledge. A prerogative writ cannot be issued as of right or as a matter of course, due to its discretionary nature and thus, the Petitioner had to make a full and frank disclosure of all matters to the Court. The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked was emphasized by Pathirana J. in *W.S. Alphonso Appuhamy v. Hettiarachchi* 77 NLR 131, 135.

[109] In the Indian case of *K.D.Sharma v. Steel Authorities of India Ltd. & others* decided on 09.07.2008, Thakker J. stated:

*"A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case" (paragraph 26).....*

*As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having*

*a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts" (paragraph 28).*

[110] The Petitioner has deliberately suppressed from the High Court the aforesaid material documents and thus, the Petitioner has been guilty of willful suppression or misrepresentation of a material facts. In the result, the Petitioner is disentitled to the discretionary remedy of writs on that score also.

### **Conclusion**

[111] For those reasons, I see no reason to interfere with the judgment of the learned High Court Judge of Ampara dated 30.09.1998 and the decision of the 3rd Respondent dated 26.03.1997 (P9) or the order of the 2<sup>nd</sup> Respondent dated 16.04.1997 (P10).

[112] The application in revision and restitutio in integrum filed by the Petitioner is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

Shiran Gooneratne J.

I agree.

**JUDGE OF THE COURT OF APPEAL**