

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

In the matter of an Application for Revision against the Order of the learned Provincial High Court Judge of Colombo dated 05<sup>th</sup> April 2017 under and in terms of Article 138 of the Constitution read with Article 145 of the Constitution.

**Case No. CPA-0027-2018**

**PHC Colombo No. HA/RA/72/2016**

**Agrarian Tribunal (Colombo)**

**No. AT/01/03/7(3)/2015/03/R/01**

H. D. Seelawathie,  
151, Uduwana,  
Homagama.

**APPLICANT**

Vs.

Malini Dharmawardena,  
22, Mahamegharama Road,  
Maharagama.

**RESPONDENT**

**AND BETWEEN**

Malini Dharmawardena,  
22, Mahamegharama Road,  
Maharagama.

**RESPONDENT-PETITIONER**

Vs.

H.D. Seelawathie,  
151, Uduwana,  
Homagama.

**APPLICANT-RESPONDENT**

**AND NOW BETWEEN**

H.D. Seelawathie,  
151, Uduwana,  
Homagama.

**APPLICANT-RESPONDENT-**  
**PETITIONER**

Vs.

Malini Dharmawardena,  
22, Mahamegharama Road,  
Maharagama.

**RESPONDENT-PETITIONER-**  
**RESPONDENT**

- |                |   |  |
|----------------|---|--|
| <b>BEFORE</b>  | : | Shiran Gooneratne J. &<br>Dr. Ruwan Fernando J.  |
| <b>COUNSEL</b> | : | Thishya Weragoda with Nethmuni<br>Medawala for the Applicant-Respondent-<br>Petitioner |

Kapila Suriyaarachchi with Dilini Wijesekara for the Respondent-Petitioner-Respondent

**ARGUED ON** : 06.03.2020

**WRITTEN SUBMISSIONS**

: 04.10.2019 & 12.06.2020 (by the  
Applicant-Respondent-Petitioner  
27.02.2020 & 24.06.2020 (by the  
Respondent-Petitioner-Respondent)

**DECIDED ON** : 29.06.2020

Dr. Ruwan Fernando, J.

**Introduction**

[1] This is an application in revision filed by the Applicant-Respondent-Petitioner seeking to set aside the judgment of the learned Provincial High Court Judge of the Western Province dated 05.04.2017 entered in the exercise of the revisionary jurisdiction vested in the Provincial High Court under Article 154P of the Constitution read with the Provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

[2] The Applicant-Respondent-Petitioner further seeks an order dismissing the revision application filed by the Respondent-Petitioner-Respondent in the Provincial High Court of the Western Province bearing Case No. HC/RA/722016 seeking to set aside the order of the Agrarian Tribunal dated 10.02.2016.

## **Factual Background**

[3] The Applicant-Respondent-Petitioner (hereinafter referred to as the Petitioner) is the tenant cultivator of the paddy land called "Induruwela Kumbura" and the Respondent-Petitioner-Respondent (hereinafter referred to as the Respondent) is the owner of the said paddy land. The Petitioner alleged in her first complaint made to the Agrarian Services Divisional Officer dated 02.01.2000 that (i) a dispute arose between the Petitioner and the Respondent during a previous cultivating season over the Respondent's share of the paddy yield due to the delay on the part of the Respondent to settle fertiliser payments to the Petitioner; (ii) thereafter, the Respondent told the Petitioner in the first cultivating season of 2001 not to cultivate the paddy land and therefore, she refrained from cultivating the said paddy land in question.

[4] The Respondent, while admitting in her statement made to the same Agrarian Services Divisional Officer that the Petitioner is the tenant cultivator stated *inter alia*, that she duly made payments to the Petitioner for purchasing fertilisers. The Respondent further stated in her statement that the Petitioner refused to cultivate the paddy land in question according to the previously followed paddy sharing arrangement and thus, she did not wish the Petitioner to cultivate the said paddy land.

[5] The said first complaint was made on 02.01.2000 when the Agrarian Services Act No. 58 of 1979 was in operation and subsequently, the Parliament passed the Agrarian Development Act No. 46 of 2000 which came into operation on 18.08.2000. Section 99 (1) of the Agrarian Development Act No. 46 of 2000 repealed the Agrarian Services Act No. 58 of 1979, subject, however, to certain transitional provisions. Thereafter, certain amendments were made to the Agrarian Development Act No. 46

of 2000 by the Agrarian Development (Amendment) Act No. 46 of 2011.

[6] On 17.03.2001, the Petitioner made a complaint to the Agrarian Services Divisional Officer and the Mediation Board in writing that she was evicted by the Respondent in the first cultivating season of 2001. On 26.03.2001, 30.12.2001 and 08.03.2002, the Petitioner made further complaints to the Assistant Commissioner of Agrarian Development that she was evicted by the Respondent in the first cultivating season of 2001.

[7] Although the Regulations were made by the Minister in charge of the subject under the Agrarian Development Act with regard to the Inquiry Procedure and Appeals under the Agrarian Development Act by Gazette Extraordinary No. 1801/36 dated 15.03.2013, the establishment of Tribunals was delayed for a long period.

### **Inquiry and Preliminary Objections**

[8] After the establishment of the Tribunals, the Petitioner complied with the said Regulations and the Agrarian Tribunal commenced proceedings on 09.04.2015. At the commencement of the inquiry, the Respondent raised several preliminary objections to the jurisdiction of the Tribunal hearing the complaint of eviction. The main preliminary objections were as follows:

1. There is no valid complaint of eviction made to the Commissioner-General in writing under section 7 (3) of the Agrarian Development Act No. 46 of 2000;
2. The Respondent was not informed of the allegation levelled against her;
3. The Petitioner has failed to disclose the exact date of eviction;

4. The Petitioner has admitted in her letter marked P1 that she was unable to cultivate the paddy land in question;
5. A complaint of eviction has not been made to the Commissioner General within 6 months from the date of the alleged eviction in compliance with section 7 (4) of the Act No. 46 of 2000; and
6. The subject matter of the paddy land has been transferred to another person.

[9] The learned President of the Agrarian Tribunal, by his order dated 10.02.2016, dismissed the said preliminary objections and fixed the matter for inquiry on the question whether or not the Petitioner has been evicted. However, the learned President of the Agrarian Tribunal further stated in her order that the submission made on behalf of the Respondent that the Petitioner had not given the Respondent's share of paddy yield has to be decided separately at the conclusion of the inquiry having regard to the letter said to have been issued by one P.V.Sirisena to the Petitioner (page 189 of the brief).

#### **Application in Revision to the Provincial High Court of the Western Province**

[10] Being aggrieved by the order of the learned President of the Agrarian Tribunal refusing the said preliminary objections raised by the Respondent, the Respondent preferred an application in revision to the High Court of the Western Province under Article 154P of the Constitution read with the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 to have the said order of the learned President of the Agrarian Tribunal revised.

[11] The parties agreed to conclude the matter by way of written submissions and the learned High Court Judge by his judgment dated

05.04.2017 took the view that the application in revision could be disposed of purely on the determination of the two preliminary objections raised by the Respondent before the Tribunal, namely, whether there is a valid complaint of eviction made under section 7(3) of the Agrarian Development Act No. 46 of 2000 and whether the complaint of eviction is prescribed under section 7(4) of the Agrarian Development Act No. 46 of 2000 as amended by the Agrarian Development (Amendment) Act No. 46 of 2011.

[12] The learned High Court Judge by his judgment dated 05.04.2017 held that:

1. The complaint of eviction had been lodged with the Agrarian Services Divisional Officer who is not entitled to entertain a complaint of eviction under section 7(3) of the Agrarian Development Act No. 46 of 2000 and thus, there is no valid complaint of eviction made to the Commissioner-General in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000;
2. Though the Petitioner had claimed that the eviction had taken place on 17.03.2001, the complaint of eviction had been made to the Commissioner-General only on 19.03.2015 and hence, the complaint made to the Commissioner-General is prescribed under section 7 (4) of the Act.

[13] Accordingly, the learned High Court Judge by his judgment dated 05.04.2017 set aside the order of the Agrarian Tribunal dated 10.02.2016 and allowed the revision application filed by the Respondent.

### **Revision Application to the Court of Appeal**

[14] Being aggrieved by the said judgment of the learned Provincial High Court Judge, the Petitioner has filed this revision application under and in

terms of Article 138 of the Constitution read with Article 145 of the Constitution.

### **Preliminary Objection raised by the Respondent**

[15] At the hearing of this application, a preliminary objection was raised by Mr. Suriyaarachchi, the learned Counsel for the Respondent that the Petitioner is not entitled to invoke the revisionary jurisdiction of the Court of Appeal against the order made by the learned Provincial High Court Judge exercising revisionary jurisdiction under Article 154P of the Constitution.

[16] Mr. Suriyaarachchi submitted that the order made by the Provincial High Court allowing the revision application is a final order made in the exercise of its revisionary jurisdiction conferred on it by Article 154P (c) read with section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and thus, the Petitioner should have filed an appeal against the said final order whether it was made in the exercise of appellate or revisionary jurisdiction. He strongly relied on the decisions of the Supreme Court in the case of *Abeygunasekera v. Setunga and Others* 1997 (1) Sri LR 62 and *Abeywardene v. Ajith de Silva* 1998 (1) Sri LR 134 in support of his submission.

[17] Hence, this Court is called upon to decide the question whether the Petitioner is entitled to invoke the revisionary jurisdiction of the Court of Appeal under Article 138 of the Constitution against an order made by the learned Judge of the Provincial High Court in the exercise of revisionary Jurisdiction conferred on the High Court by Article 154P of the Constitution

**(a) Right of appeal to the Court of Appeal from High Court in the exercise of its Revisionary Jurisdiction under Article 154P of the Constitution read**

**with the Provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.**

[18] It is not in dispute that the order made by the learned Provincial High Court Judge of the Western Province on 05.04.2017 is a final order or judgment in the exercise of its revisionary jurisdiction conferred on the Provincial High Court under section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with 154P(3)(c) of the Constitution. Article 154P (6) of the Constitution provides that, **subject to the provisions of the Constitution and any law**, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under Article 154P (3) (b) or 3 (c) or (4), may appeal to the Court of Appeal in accordance with Article 138 of the Constitution. Article 154P (6) reads as follows:

*“Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or 3 (c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.”*

[19] The Petitioner has not appealed to the Court of Appeal under Article 154P (6) of the Constitution against the order of the High Court dated 05.04.2017 made in the exercise of its revisionary jurisdiction. I will now proceed to consider whether the two cases cited by Mr. Suriyaarachchi are relevant to support his argument that the Petitioner is not entitled to file a revision application in the Court of Appeal when she has failed to file an appeal to the Court of Appeal in terms of Article 154P(6) read with Article 138(1) of the Constitution.

[20] The Supreme Court in *Abeygunasekera v. Sethunga and others* (supra) has held that the Appellate jurisdiction of the Court of Appeal

under Article 138(1) read with Article 154P(6) of the Constitution is not limited to correcting errors committed by the High Court only in respect of orders given by way of an appeal and the Court of Appeal has jurisdiction to hear an appeal against a decision of the High Court whether given by way of an Appeal or Revision.

[21] It is to be noted, however, that a bench consisting of 5 Judges of the Supreme Court in *Abeywardene v. Ajith de Silva* (supra) did not follow the said decision. The Supreme Court in *Abeywardene v. Ajith de Silva* (supra) held that section 9 of the Act No. 19 of 1990 does not give a right of appeal to the Court of Appeal from an order of the High Court made in the exercise of its appellate jurisdiction. The same view was taken by the Supreme Court in *Wickremasekera v. Officer-in-Charge, Police Station, Ampara* (2004) 1 Sri LR 264 and *Muththusamy Balaganeshan v. The Officer-in-Charge, Police Station, Seeduwa* S.C. SPL/LA No. 79/2015 decided on 01.04.2016.

[22] The cumulative effect of the provisions of Article 154P (3) (b), 154P (6) and section 9 of Act No. 19 of 1990 is that while there is a right of appeal to the Supreme Court from the orders, etc., of the High Court established by Article 154P of the Constitution **in the exercise of the appellate jurisdiction vested in it by Article 154P (3) (b) or section 3 of the Act No. 19 of 1990** or any other law, there is no right of appeal to the Supreme Court from the orders made by the High Court in the exercise of the revisionary jurisdiction vested in it by Article 154P or section 3 of the Act No. 19 of 1990 (*Abeywardene v. Ajith de Silva* (supra)).

[23] Thus, the Petitioner was entitled to file an appeal to the Court of Appeal in terms of Article 138 (1) of the Constitution read with Article 154 (6) of the Constitution in respect of any final order or judgment made by

the Provincial High Court in the exercise of its revisionary jurisdiction under section 3 of the High Court of the Provinces (Special provisions) Act read with Article 154P (3) (c) of the Constitution.

**(b) Can the Court of Appeal exercise its revisionary powers under Article 138 of the Constitution when no appeal had been filed by the Petitioner**

[24] The 13<sup>th</sup> Amendment to the Constitution amended Article 138 (1) of the Constitution and made the High Court of the Provinces subject to the appellate jurisdiction of the Court of Appeal. Article 138 of the Constitution enables the Court of Appeal to receive, entertain, hear and dispose of appeals from the High Courts, Courts of First Instance, tribunals and other institutions. It also has sole and exclusive jurisdiction, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters or other institutions may have taken.

[25] Amended Article 138 (1) of the Constitution reads as follows:

*138- (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognisance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognisance (emphasis added)*

.....

[26] Thus, the Court of Appeal has wide revisionary powers under Article 138 of the Constitution for the correction of all errors in fact or in law which are committed by the High Court in the exercise of its revisionary jurisdiction under section 3 of the High Court of the Provinces (Special

provisions) Act No. 19 of 1990 read with Article 154P (3)(c) of the Constitution.

[27] It is trite law that the purpose of revisionary jurisdiction is supervisory in nature and that the object is the proper administration of justice (*Attorney-General v. Gunawardena* (1996) 2 Sri LR 149, at p. 156). In the case of *Marian Beebee v. Seyed Mohamed* 58 NLR 36, Sansoni C.J has clearly stated the reasons for the exercise of the extraordinary power of revisionary jurisdiction by Appellate Courts as follows:

*"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that unless the power is exercised injustice will result."*

[28] In my view, the Court of Appeal has wide powers to grant relief in appropriate cases by way of revision, as the interests of justice may require, either, *ex mero moto* or on any application made, where it appears that a miscarriage of justice has occurred or there are special circumstances which warrant the intervention of the Court under Article 138 of the Constitution.

[29] Relief by way of revision had been granted by the Supreme Court in cases where there is no appeal that has been filed and even in the absence of a separate application for revision. In the early case of *Ranasinghe v. Henry* 1 NLR 303, the appeal was dismissed on the ground that no appeal lies from a claim order made by the District Court, but the Supreme Court took up the case in revision, when it was found that an order of the District Court was *ex facie* wrong.

[30] In *A. Sinnathangam and another v. E. Meeramohaideen* 60 NLR 394, T.S. Fernando J. stated that “The Supreme Court possesses the power to set aside, in revision, an erroneous decision of the District Court in an appropriate case even though an appeal against such decision correctly held to have abated on the ground of non-compliance with some of the technical requirements in respect of the notice of security”.

[31] Similarly, in *Rusheed Ali v. Mohamed Ali*, (1981) 2 Sri LR 29, the Court of Appeal held that the powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them **whether an appeal lies or not or whether an appeal had been taken or not**. However, this discretionary remedy can be invoked only where there are "exceptional circumstances" warranting the intervention of the Court. In the case of *Parapragasam & another v S.A. Emmanuel*, (C.A. 931/88 - D.C. Jaffna L/4772 - C.A.M. 24.7.91) Weerasekera, J. made the following observations on this question.

*“....It is now settled law that the power of revision vested so in the Court of Appeal is a discretionary remedy. The practice is not to exercise the power of revision when any other or alternate remedy is available for the reason that it is a discretionary remedy vested in Court and it is exercised when the applicant has no other remedy. But it is also now settled law that the revisionary power would be exercised even though there is an alternate remedy only if there is the existence of special circumstances are shown necessitating the indulgence by Court to exercise its discretionary remedy of revision.’*

[32] Mr. Suriyaarachchi however, submitted that the Petitioner has failed to aver in the Petition as to why she invoked the revisionary jurisdiction of the Court of Appeal instead of the appellate jurisdiction of the Court of Appeal against the said judgment. The Petitioner has in fact averred in paragraph 28 of the Petition that she filed a Leave to Appeal Application

in the Supreme Court against the said order of the Provincial High Court dated 05.04.2017 and thereafter, she withdrew the said Application on 30.01.2018 reserving her right to invoke the revisionary jurisdiction of the Court of Appeal against the said judgment.

[33] The Petitioner has thus, filed a Leave to Appeal Application in the Supreme Court against the said judgment of the learned Provincial High Court Judge dated 05.04.2017 made in the **exercise of its revisionary jurisdiction** under section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. Accordingly, the Petitioner having mistakenly filed a Leave to Appeal Application in the Supreme Court against the said judgment, withdrew the said Leave to Appeal Application and filed this revision application in this Court under Article 138 of the Constitution seeking to set aside the said judgment.

[34] The Petitioner has pleaded in the Petition that the findings of the learned High Court Judge that the Petitioner has not filed a valid complaint to the Commissioner-General in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000 and that the Petitioner's complaint of eviction is prescribed for non-compliance with section 7 (3) of the said Act are manifestly erroneous and caused a denial of justice warranting the interference of the Court of Appeal under Article 138 of the Constitution (Vide-paragraphs 23 and 24 (e) and (f) of the Petition).

[35] For those reasons, I hold that the Court of Appeal has revisionary jurisdiction to grant relief to the Petitioner in respect of the impugned order made by the Provincial High Court Judge in the exercise of its revisionary jurisdiction, whether **an appeal had been taken or not**, if it appears to Court that a miscarriage of justice has occurred or exceptional

circumstances exist warranting the exercise of revisionary powers of the Court of Appeal under Article 138 (1) of the Constitution.

### **Other Points for Determination**

[36] At the hearing, in addition to the aforesaid preliminary objection, both parties restricted their submissions to the following matters:

1. Whether the Provincial High Court had revisionary jurisdiction in respect of the impugned order made by the Agrarian Tribunal under the provisions of the Agrarian Development Act No. 46 of 2000 after the repeal of the Agrarian Services Act No. 58 of 1979;
2. Whether the Petitioner is guilty of laches in pursuing the revision application;
3. Whether there was a valid complaint of eviction under section 7 (3) of the Agrarian Development Act No. 46 of 2000 as amended;
4. Whether the complaint of eviction is prescribed under section 7 (4) of the Agrarian Development Act No. 46 of 2000 as amended.

**Did the Provincial High Court have revisionary jurisdiction in respect of an order made by the Agrarian Tribunal under section 7 of the Agrarian Development Act No. 46 of 2000 after the Repeal of the Agrarian Services Act No. 58 of 1979?**

[37] At the hearing, Mr. Weragoda, the learned Counsel for the Petitioner submitted that the Provincial High Court of the Western Province did not have the revisionary jurisdiction to hear and determine the Respondent's revision application filed in the Provincial High Court for the following reason:

- (i) The Agrarian Services Act No. 58 of 1979 was repealed by the Agrarian Development Act No. 46 of 2000 and thus, the references to sections 3 and 5 of the Agrarian Services Act No. 58 of 1979

found in the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 are of no relevance or consequence due to the repeal of the Agrarian Services Act No. 58 of 1979 by the Parliament.

[38] I shall now proceed to consider the said argument of Mr. Weragoda in detail. By Article 154P of the Constitution, the Provincial High Court was established and the sole jurisdiction which was conferred on the Court of Appeal by Article 138 of the Constitution was expanded to Provincial High Courts by Article 154P (3) and (4) of the Constitution. Article 154P (3) (b) of the Constitution conferred on the Provincial High Court appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province. Article 154P (3) (b) reads as follows:

“(3) Every such High Court shall—

*(b) Notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province”.*

(a) Appellate and Revisionary Jurisdiction of the Provincial High Court in respect of orders made under section 5 and 9 of the Agrarian Services Act No. 58 of 1979 in respect of any land situated within the Province

[39] Article 154P (3) (c) of the Constitution enacts that every such High Court shall “exercise such other jurisdiction and powers as Parliament by law, provide”. This paved the way for Parliament to confer further jurisdiction (other than those set out in Article 154P (3) (a) and (b) and 154P (4) (a) and (b)) on the Provincial High Court by other laws passed by Parliament. Article 154 (P) (3) (c) enabled Parliament to enact the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 to make

provision regarding the procedure to be followed in, and the right of appeal to, and from the High Court established under Article 154P of the Constitution and for matters connected therewith or incidental thereto.

[40] Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 created a new jurisdiction and subject to any law, it conferred appellate and revisionary jurisdiction on the Provincial High Court in respect of orders made by Labour Tribunals within the Province and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within the Province.

[41] Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 reads as follows:

*"A High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province".*

[42] Section 4 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 *inter alia*, granted a right of appeal to any party aggrieved by any order made under section 5 and 9 of the Agrarian Services Act No. 58 of 1979 in respect of a land situated within the Province. It further provides that any such party may, subject to the provisions of any written law, **appeal** therefrom to the Provincial High Court established by Article 154P of the Constitution. Section 4 reads as follows:

*"A party aggrieved by any conviction, sentence or order, entered or imposed, by a Magistrate's Court, a Primary Court, a Labour Tribunal or by an order made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979 may, subject to the provisions of any written law applicable to the procedure and manner for*

*appealing and the time for preferring such appeals, appeal therefrom to the High Court established by Article 154P of the Constitution for the Province within which such court or tribunal is situated or within which the land which is the subject of the order made under the Agrarian Services Act, is situated.”*

[43] In *Abeysiri v. Premaratne* (2000) 3 Sri LR 373, 375, the Court of Appeal considered the scope of the revisionary jurisdiction of the Provincial High Court in respect of an order made under the repealed Agrarian Services Act No. 58 of 1979. The Court of Appeal held that the Provincial High Court has appellate and revisionary jurisdiction in respect of orders made under section 5 and 9 of the Agrarian Services Act No. 58 of 1979, in respect of any land situated within the Province. The Court of Appeal held at pages 375-376 that:

*“According to Sections 3 and 4 of the High Court of the Provinces (Special provisions) Act No. 19 of 1990, a High Court shall exercise appellate and revisionary jurisdiction in respect of orders made under Section 5 or Section 9 of the Agrarian Services Act No. 58 of 1979, in respect of any land situated within that province.....”*

*In view of the above provisions of law a High Court of the province has appellate and revisionary jurisdiction only in respect of orders made under Section 5 and Section 9 of the Agrarian Services Act. Therefore the High Court has no appellate and revisionary jurisdiction in respect of orders made under the other Sections of the Agrarian Services Act. As far as the Agrarian Services Act is concerned, the only appellate and revisionary jurisdiction which a High Court has is in regard to orders made under Section 5 or Section 9 of the Agrarian Services Act. In the instant case, the Assistant Commissioner of the Agrarian Services has made his order under Section 56(1) of the Agrarian Services Act. Against such an order, a Provincial High Court has no appellate, revisionary or writ jurisdiction.”*

[44] It is crystal clear that a Provincial High Court has appellate and revisionary jurisdiction in respect of orders made under section 5 or 9 of the Agrarian Services Act No. 58 of 1979, in respect of any land situated within that Province.

**(b) Effect of the Reference to Section 5 of the Agrarian Services Act No. 58 of 1979 found in section 3 and 4 of the High Court of the Provinces (Special provisions) Act on Section 7 of the Agrarian Development Act No. 46 of 2000**

[45] The Agrarian Services Act No. 58 of 1979 was repealed by section 99 (1) of the Agrarian Development Act No. 46 of 2000 subject to certain transitional provisions and the said Act was further amended by Act No. 46 of 2011. The expression "repeal of a statute" generally connotes the complete abrogation or obliteration of one statute by a subsequent statute (N. S. Bindra's Interpretation of Statutes, 10th Ed. p. 1530). According to the Black's Law Dictionary, p. 1463, the term "repeal" is the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated, (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force, (called "implied" repeal).

[46] Lord Tenterden stated in *Surtees v. Ellison* [1947] F.C.R. 141 at 166 that the rule of English Common Law was that if an Act was repealed, then in the absence of any provision in it to the contrary, it was deemed "that the repealed Act never existed except as to matters and transactions past and closed". This is the general rule. In *Lemm v. Mitchell* (1912) A.C. 400 (406), their Lordships quoted from the decision of Tindal, C.J., in *Kay v. Goodwin* (1830) 6 Bing. 576 : 130 E.R. 1403 to explain the exception to the general rule as follows:

*"I take the effect of repealing a statute was to obliterate it completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law".*

[47] This was the rule of the English common law which was applied in cases of statutes which were repealed and under this rule, the effect of the repeal is that it is to be taken as if the statute had never been enacted, except as to transactions begun or prosecuted while it was existing law.

[48] Mr. Weragoda argues that although section 3 of the the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 confers the revisionary jurisdiction on the Provincial High Court in respect of orders made under section 5 or 9 the Agrarian Services Act No. 58 of 1979, the same section does not refer to orders made under the Agrarian Development Act No. 46 of 2000. He argues that the revisionary jurisdiction of the Provincial High Court is taken away with the repeal of the Agrarian Services Act No. 58 of 1979 and therefore, the references to the Agrarian Services Act No. 58 of 1979 found in section 3 and 4 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 are now of no force due to the repeal of the Agrarian Services Act No. 58 of 1979.

#### **Construction of references to repealed enactments**

[49] Mr. Weragoda's argument is likely to succeed in a situation where the references to any provision of the repealed Act are not made part of the New Agrarian Development Act or such references are so contrary to or inconsistent with or irreconcilable with those of the corresponding provisions of the Agrarian Development Act, so that two cannot stand

together, in which case the maxim, *leges posteriores contrarias abrogant*- meaning “later laws abrogate earlier, contrary ones” applies.

[50] I am not inclined to agree with Mr. Weragoda’s argument, first, in view of section 16 of the Interpretation Ordinance, which has made an express provision to counteract the **effect of repeal** and refers to “Reference to Repealed Enactments”. Section 16 provides that where an Act is repealed and re-enacted with or without modification, the references to the provision of a former enactment, shall be construed as references to the corresponding provision so re-enacted. Section 16 of the Interpretation Ordinance reads as follows:

*“(1) Where in any written law or document, reference is made to any written law which is subsequently repealed, such reference shall be deemed to be made to the written law by which the repeal is effected or to the corresponding portion thereof;*

*(2) This section shall apply to written laws and documents made as well before as after the commencement of this Ordinance.”*

[51] Section 16 of the Interpretation Ordinance which refers to the construction of references to repealed enactments provides a guard against the normal legal effect of a repeal under the English Common Law. Thus, where any Act is repealed and re-enacted, references to provisions of the repealed former enactment must be read and construed as references to the corresponding re-enacted new provisions, unless a different intention appears (*State Through S.P., New Delhi v. Ratan Lal Arora*, Case No. Appeal (crl.) 532 of 2004 decided on 26 April, 2004). This Indian case has interpreted section 8 of the Indian General Clauses Act that has a similar meaning to section 16 of the Interpretation Ordinance of Sri Lanka.

[52] It is a well-known rule of statutory construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute (*M. J. M. Nilamdeen v. D. R. C. Nanayakkara* 76 N.L.R. 169 at 171 referring to the following statement made by James LJ. in *The Reverend Thomas Pelham Dale's and The Reverend R. W. Enraght's Case* (1881) 6 Q.B.D. 376 at 453):

*"Now where the words of an old statute are either transcribed into or by reference made part of a new statute, it is a rule of construction that this is done with the object and intent of adopting any legal interpretation which has been put upon them by courts of law, the same words being used in order that everything that had been settled before as to their construction should remain settled without fresh litigation."*

[53] I will now proceed to determine whether the reference to the repealed Act can be construed as reference to the corresponding provisions of the new Act. In short the issue is, when the Agrarian Services Act is repealed and re-enacted by Agrarian Development Act No. 46 of 2000, is it possible to construe the reference to section 5 of the repealed Act, as the reference to the corresponding section 7 of the Agrarian Development Act No. 46 of 2000 as amended.

[54] In the present case, the repeal is followed by a new legislation and hence, it is necessary to consider whether the new legislation has been enacted on the same subject, namely, the rights of the tenant cultivators, the manner of making a complaint of eviction, the inquiry procedure and restriction of eviction of tenant cultivators of paddy lands. Secondly, it is also crucial to consider whether the new legislation manifests an intention incompatible with or contrary to the provisions of the repealed Act. In order to resolve this dispute, it is necessary to examine in some detail the

references to the provisions of the old Act and the new Act for the purpose of determining whether they have been enacted on the same or different subject or whether they indicate same or different intentions. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute related to the subject and the mere absence of a saving clause is by itself not material (T.S. Baliah v. T.S. Rangachari, AIR 1969 SC 701).

[55] When the Agrarian Development Act was repealed by Parliament and the Agrarian Development Act No. 46 of 2000 and the Agrarian Development (Amendment) Act No. 46 of 2011 was enacted, most of the subsections found in section 5 of the Agrarian Services Act were retained by section 7 of the Agrarian Development Act with certain modifications. As noted, the side note of section 5 of the Agrarian Services Act No. 58 of 1979, namely, “Rights of tenant cultivators, provision in regard to certain evicted tenants of paddy lands and restriction of eviction of tenants of paddy lands” is the identical side note found in section 7 of the Agrarian Development Act No. 46 of 2000.

[56] Further, subsections 1 (rights of tenant cultivators), 2 (protection of a tenant cultivator against a partition decree, 5 (presumption) and a portion of subsection 6- (appeal to the Board of Review), a portion of subsection 7 (orders to be made), 8 (payment of damages), 9 (except the second proviso), 10, 11, 12 and 15 of section 6 (procedure at the inquiry) were also retained in section 7 of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011.

[57] The modifications in subsections (3), (4), (6) and (7) of section 7 of the Agrarian Development Act only relate to the following matters:

- (i) The authority to whom the complaint of eviction shall be made, namely, Commissioner-General instead of the Commissioner referred to in the old Act;
- (ii) The period within which the complaint of eviction shall be made, namely, within a period of 6 months from the date of eviction instead of 1 year or 2 years respectively referred to in the old Act;
- (iii) The authority before whom the inquiry is to be conducted, namely, a Tribunal instead of an inquiry officer;
- (iv) The right of appeal given to the High Court of the Province against the decision made by the Board of Review instead of the Court of Appeal referred to in the old Act; and
- (v) Orders to be made by the Commissioner-General instead of the Comissioner either upon the receipt of the decision of the Tribunal where no appeal has been made or receipt of the decision of the Board of Review where an appeal has been made to the Board of Review or receipt of the decision of the High Court where an appeal has been made to the High Court under (subsections 7).

[58] As noted, the side notes of section 5 of the Agrarian Services Act and section 7 of the Agrarian Development Act are almost identical and the words of section 5 of the Agrarian Services Act have been made part of the corresponding section 7 of the Agrarian Development Act with certain modifications, which are not inconsistent or contrary to or repugnant to the provisions of section 5 of the Agrarian Services Act.

[59] Thus, when the Agrarian Services Act No. 58 of 1979 was repealed and re-enacted with the Agrarian Development Act No. 46 of 2000 as amended, the references to the repealed Agrarian Services Act would be considered as the references to the corresponding portion of the Agrarian Development Act, unless a different intention is expressed by the

Legislature or such corresponding portion is contrary to or inconsistent with those of the new Act so that the two cannot stand together. I am of the view that the reference to section 5 of the Agrarian Services Act No. 58 of 1979 that is found in sections 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 must now be construed as the reference to section 7 of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011.

**(d)Was the Respondent entitled to file a revision application in the Provincial High Court established by Article 154P of the Constitution without preferring an appeal to the Board of Review established under section 42A of the Agrarian Development Act No. 46 of 2000?**

[60] I will now proceed to consider the second argument of Mr. Weragoda. He submitted that the Agrarian Development Act does not confer revisionary jurisdiction on the Provincial High Court pertaining to the orders made under the Act as the High Court of the Provinces (Special Provisions) Act does not refer to the Agrarian Development Act No. 46 of 2000. He further submitted that in terms of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011, any person aggrieved by the decision of the Tribunal has a right of appeal to the **Board of Review** and thereafter, any aggrieved party from a decision of the Board of Review can prefer an appeal to the High Court.

[61] In the circumstances, he argued that once the Agrarian Services Act was repealed, the procedure with regard to appeals shall be exercised in the manner provided by the Agrarian Development Act and thus, the Respondent cannot bypass the Board of Review and file a revision application in the Provincial High Court directly as it has happened in the present case. His argument was thus, that the provincial High Court did not have revisionary jurisdiction to hear and determine the Respondent's

application as the revisionary jurisdiction is vested only with the Court of Appeal.

[62] It is to be stressed at the outset that the jurisdiction conferred on the Court of Appeal by Article 138 of the Constitution shall be exercised subject to the provisions of the Constitution and of any law. As noted earlier, the Provincial High Court has power to exercise revisionary jurisdiction in respect of orders made by the Agrarian Tribunal under section 7 of the Agrarian Development Act as section 7 of the Agrarian Development Act corresponds to section 5 of the Agrarian Service Act No. 58 of 1979. As noted, in terms of section 3 of the High Court of the Provinces (Special provisions) Act No. 19 of 1990, the Provincial High Court shall, subject to any law, exercise revisionary jurisdiction in respect of an order made under section 7 of the Agrarian Development Act, which corresponds to section 5 of the repealed Agrarian Services Act No. 58 of 1979.

[63] Thus, the revisionary jurisdiction conferred on the Provisional High Court by section 3 of the High Court of the Provinces (Special provisions) Act in respect of orders made under section 7 of the Agrarian Development Act shall be exercised subject to the provisions of the Agrarian Development Act No. 46 of 2000.

[64] It is important to examine first, the scope of the decisions to be made by the Agricultural Tribunals and the Board of Review under the Agrarian Development Act. Secondly, it is also important to consider whether the revisionary jurisdiction conferred on the Provincial High Court by section 3 of the High Court of the Provinces (Special Provisions) Act has been taken away by section 7 of the Agrarian Development Act No. 46 of 2000.

## **Scope of Inquiry and Nature of the Decision to be made by the Agricultural Tribunal under Act No. 46 of 2000**

[65] Section 7 (3) of the Agrarian Development Act provides that once a notification is made to the Commissioner-General by a tenant cultivator, the Commissioner-General shall refer such notification to the Agrarian Tribunal to hold an inquiry for deciding whether or not a person has been evicted. Section 7 (3) reads as follows:

*“Where a tenant cultivator of any extent of paddy land notifies the Commissioner-General in writing that he has been evicted from such extent, the Commissioner-General shall refer the matter to the Agrarian Tribunal and direct the tribunal to hold an inquiry for the purpose of deciding the question whether or not such person has been evicted.”*

[66] The scope of the inquiry to be held by the Agrarian Tribunal is set out in section 7 (5) and 7 (6) of the Agrarian Development Act as follows:

- (5) *If at the inquiry held by the Agrarian Tribunal, it is proved to the satisfaction of the Agrarian Tribunal that the tenant cultivator had been evicted from such extent, it shall be presumed, unless the contrary is proved, that such eviction had been made by, or at the instance of the landlord;*
- (6) *The landlord of the extent of paddy land and the person evicted shall be given an opportunity of being heard by the respective Agrarian Tribunal. On the conclusion of the inquiry, the decision of the Agrarian Tribunal shall be communicated in writing by registered post to the Commissioner-General, the landlord and the person evicted.*

[67] The inquiry procedure to be followed by the Tribunal is set out in Part 1 of the Regulations made by the Minister of Economic Development published in the Gazette Extraordinary No. 1801/36 dated 15.03.2013. It is crystal clear that the scope of the inquiry is to decide

whether or not the tenant cultivator has been evicted from the paddy land in question in violation of the provisions of the Agrarian Development Act.

[68] The decision in terms of section 7 (6) of the Agrarian Development Act as amended has to be made after giving **an opportunity of being heard** in person or through a representative, at such inquiry by the Agrarian Tribunal. The **decision** to be made by the Tribunal under section 7 (6) relates to the question whether or not the person who has made the **complaint as a tenant cultivator has been evicted** in violation of the Provisions of the Agrarian Development Act.

#### **Appeal to the Board of Review from the Decision of the Tribunal and Nature of Decision of the Board of Review**

[69] Section 7 (6A) of the Agrarian Development Act No. 46 of 2011 has granted a right to any party aggrieved by the **decision of the Tribunal** to appeal to the Board of Review. Section 7 (6A) reads as follows:

*"(6A) The landlord or the person evicted who is aggrieved by the decision of the Agrarian Tribunal may, within thirty days of the communication of the decision to him, appeal therefrom to the Board of Review established under section 42A either on a question of law or fact. Such appeal shall be submitted to the Commissioner-General within the time period allowed for such appeal and the Commissioner-General shall forthwith refer such appeal to the Panel appointed under subsection (1) of section 42A to be heard and concluded by a Board of Review established under the provisions of subsection (5) of section 42A".*

[70] In terms of the Agrarian Development Act, the right to file an appeal to the Board of Review has been granted **in respect of a decision of the Tribunal, which relates to the question whether or not an eviction has taken place** as contemplated by sections 7 (6A) of the Act.

## **Appeal to the High Court from the Decision of the Board of Review**

[71] The Agrarian Development Act further makes provision in section 7 (6C) for any person aggrieved by such a decision of the **Board of Review** to appeal to the Provincial High Court Section 7 (6C) reads as follows:

*“(6C) The landlord or the person evicted who is aggrieved by the decision of the Board of Review may, within thirty days of the communication of the decision to him, appeal to the High Court of the Province against such decision on a question of law. A copy of the appeal shall be sent to the Commissioner-General by registered post at the time when the appeal is made”.*

[72] Section 7(7) further refers to the orders to be made by the Commissioner-General on the basis of the following decisions made by the Board of Review or the Provincail High Court. Section 7 (7) reads as follows:

*“(7) Where at any inquiry referred to in subsection (6B) the Board of Review decides that-*

*(a) eviction has taken place and no appeal has been made under subsection (6C) against such decision within the time allowed therefor or the High Court of the Province has, in an appeal made under subsection (6C) confirmed the decision of the Board of Review; or*

*(b) eviction has not taken place and the High Court of the Province has, in an appeal made under subsection (6C), varied the decision of the Board of Review and confirmed the fact that eviction has in fact taken place, (7) Where The decision referred to in section 7(6A) by the landlord or at his instance or (ii) such person has not been evicted.*

*then in any one of the above-situations—*

- (i) *the person evicted shall be entitled to have the use and occupation of the extent of paddy land restored to him; and*
- (ii) *the Commissioner shall on receipt of the decision of the Board of Review or the High Court of the Province, .....by an order in writing require all persons in possession of the extent of paddy land in dispute to vacate ... .....*"

[73] It seems to me that the Board of Review in appeal may, decide whether or not an eviction has taken place (section 7 (7)(a)) and the Provincial High Court may, in appeal, either confirm or vary such **decision of the Board of Review**. Hence, the confirmation or variation of the decision of the Board of Review by the High Court relates only to the question whether or not an eviction of a tenant cultivator has taken place within the meaning of the Agrarian Development Act.

#### **(a) Nature of the Decision made by the Agricultural Tribunal**

[74] It is abundantly clear that the decision of the Tribunal was to refuse all 6 preliminary objections raised by the Respondent objecting to the jurisdiction of the Tribunal. Furthermore, as noted in paragraph 8 of this order, the preliminary objection 4 was overruled subject to further review by the Tribunal at the conclusion of the inquiry with regard to the settlement of the Respondent's share of paddy yield. Thus, the Tribunal has not so far, held an inquiry under sections 7 (5) and 7 (6) of the Act and made no **final decision on the question whether or not the Petitioner has been evicted in terms of the provisions of the Act**.

[75] The decision of the Tribunal in refusing preliminary objections to the jurisdiction is not a final decision made by the Tribunal on the question whether or not an eviction has been made as contemplated by sections 7 (6) read with section 7(3) of the Agrarian Development Act. The decision

of the Tribunal is an interlocutory order which does not fall within a decision to be made by the Tribunal at the conclusion of the inquiry contemplated by the provisions of the Agrarian Development Act No. 46 of 2000.

[76] An Appeal is a statutory right and must be expressly created and granted by the statute and it cannot be implied (*Bakmeewewa v. Raja* (1989) 1 Sri LR 231 (SC), *Martin v. Wijewardena* (supra), *Gamhewa v. Maggie Nona* (1989) 2 Sri LR 250) and *Mudiyanse v. Bandara* (SC Appeal 8/89 S.C. minutes of 15.03.1991). A perusal of the order made by the Tribunal on 10.02.2016 reveals that it is not a final order having the effect of deciding the question whether or not an eviction has taken place. It is settled law that a final order is one made on any application or proceeding that, for whichever side the order was given, it will, if it stands, finally determine the matter in litigation (dictum of Lord Esher, MR in *Salaman v. Warner & others* (1891) 1 Q.B. 734, (C. A).

[77] In the present case, the preliminary objections were rejected by the Tribunal subject to the above-mentioned variation and the matter was fixed for inquiry. It is absolutely clear that the order made by the Tribunal on 10.02.2016 overruling the said preliminary objections, subject to the said variation, is not a decision contemplated by section 7 (6) of the Agrarian Development Act. It is only an interlocutory order made by the Tribunal refusing preliminary objections to the jurisdiction of the Tribunal, which in my view, did not finally decide the rights of the parties, namely, the question whether or not an eviction has taken place within the meaning of section 7 (6) of the Agrarian Development Act.

**Has the Revisionary Jurisdiction of the Provincial High Court been taken away by section 7 (6A) of the Agrarian Development Act?**

[78] Mr. Weragoda's argument also centered on the proposition that where a statute confers jurisdiction on the Tribunal, it must be taken to have impliedly granted the power of doing all such acts as are essentially necessary to its exercise. This proposition was lucidly explained by Asquith L.J. in the case of *Wilkinson v. Barking Corporation*. [1948] 1 K.B. 721 at 725 as follows:

*"It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.* As the House of Lords ruled in *Pasmore v. Oswaldtwistle U.D.C.* [1898] A. C. 387; 394. (Per Lord Halsbury): *"The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law".*

[79] The rule that "where an Act creates an obligation and provides a remedy, no other remedy can be adopted" does not apply here. There is no provision in the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011 that provides that any decision made by the Tribunal, whether interlocutory or final, in respect of the inquiry held under section 7 shall be decided by the Board of Review in the exercise of its appellate jurisdiction. The Agrarian Development Act has conferred appellate power on the Board of Review either to confirm or vary the decision made by the Tribunal and such decision refers to the question whether or not an eviction has taken place.

[80] When the jurisdiction has been conferred by the Agrarian Development Act on the Board of Review either to confirm or vary the decision made by the Tribunal on the question whether or not an eviction has taken place, no new jurisdiction which is not vested in it under the

provisions of the statute can be presumed to have been conferred on the Board of Review. In *Prosunno Coomar Paul v. Koylash Chunder Paul*, 8 WR 428, 436 Peacock C.J said:

*"The jurisdiction of the ordinary courts of judicature is not to be taken away by putting a construction upon an Act of the legislature, which does not clearly say that it was the intention of the legislature to deprive such courts of their jurisdiction. The right of a person to relief in a civil court is a common law right and so long as he can show a cause of action he can bring a suit for redress."*

[81] When the jurisdiction is not clearly indicated in the language of a statute, the courts will lean against an ouster of the jurisdiction of the ordinary courts, except in cases which are clearly and specifically indicated by the legislature itself (*Yusuf Levai Saheb (Mhd) v. Haji Mohommad Hussain Rowther* (1963) 2 Mad LJ 287, 76 MLW 482). In my view, section 7 (6B) of the Act No. 46 of 2000 as amended by Act No. 46 of 2011, created no additional statutory obligation on the Board of Review in the exercise of the appellate jurisdiction, to review an order of interlocutory nature made by the Tribunal on the question of jurisdiction.

[82] In my view, the ordinary revisionary jurisdiction conferred on the Provincial High Court by section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 in respect of the interlocutory order in question made by the Tribunal is not ousted by the appellate power given to the Board of Review under section 7 (6A) and (6B) of the Agrarian Development Act.

[83] For those reasons, I hold that the Provincial High Court of the Western Province had revisionary jurisdiction in terms of section 3 of the High Court of the Provinces (Special provisions) Act No. 19 of 1990 in respect of the impugned interlocutory order made by the Tribunal under

section 7 (6) of the Agrarian Development, which now corresponds to section 5 of the repealed Agrarian Services Act No. 58 of 1979 found in section 3 of the High Court of the Provinces (Special provisions) Act No. 19 of 1990.

**Has the Petitioner made a Valid Complaint of Eviction under the Provisions of the Agrarian Development Act within the Prescribed Period?**

[84] Mr. Weragoda and Mr. Suriyaarachchi made lengthy and elaborate submissions on the two questions of the order made by the learned High Court Judge, namely, whether or not the complaint of eviction is a valid complaint under section 7 (3) and if so, whether or not it is prescribed in terms of section 7 (4) of the Agrarian Development Act No. 46 of 2000 as amended.

[85] Mr. Suriyaarachchi argued at the hearing that as the complaint of eviction had been made to an Agrarian Development Officer and not to the Commissioner-General of Agrarian Services, there was no valid complaint of eviction made by the Petitioner under section 7 (3) of the Agrarian Development Act and thus, the Commssioner-General had no power to refer the complaint to the Agrarian Tribunal directing the Tribunal to hold an inquiry.

[86] The learned High Court Judge has taken the view that complaint of eviction dated 17.03.2001 marked “P1” had been addressed to the Agrarian Services Divisional Officer who was not authorised to exercise the powers of the Commissioner-General under section 38 of the Agrarian Development Act and therefore, the Petitioner has not made a valid complaint of eviction to the Commissioner-General in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000 (Vide- pages 104-105 of the brief).

[87] I shall consider first, as to when the Petitioner had made a complaint of eviction and second, whether the Petitioner's complaint of eviction is a valid complaint in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000 as amended. The remedy of the tenant cultivator who complains of eviction is set out in section 7 (3) of the Agrarian Development Act No. 46 of 2000, which reads as follows:

“Where a tenant cultivator of any extent of paddy land notifies the Commissioner-General in writing that he has been evicted from such extent, such Commissioner-General shall refer the matter to the Agrarian Tribunal and direct the Tribunal to hold an inquiry for the purpose of deciding the question whether or not such person has been evicted.”

[88] Section 7 (4) of the same Act provides that such notification “shall be made within six months from the date of such eviction.

**(a) Definition of “Eviction” within the meaning of the Agrarian Development Act No. 46 of 2000**

[89] It must be stressed here that the notification referred to in subsection (3) of section 7 has to be **one of the eviction** of the tenant cultivator and not a threat to evict or interference in the use or occupation or cultivation of a paddy land. The word “evict” has been defined in section 100 of the Agrarian Development Act No. 46 of 2000 in the following terms:

*“‘Evict’ in relation to a tenant cultivator of paddy land means to deprive a tenant cultivator of his right to use, occupy and cultivate the whole or any part of the extent of paddy land let to him, by the use of direct or indirect methods”.*

[90] Eviction of a tenant cultivator from the paddy land can be caused by direct methods such as a physical dispossession (direct eviction) or by indirect methods of disrupting the services and facilities that contribute to the use, occupy and cultivate the paddy land such as by cutting off all water

and access facilities to the paddy land (constructive eviction). The eviction may also be total or partial. It is total, when the tenant cultivator is wholly deprived of his right to use, occupy and cultivate in the whole land or partial, when he is deprived of only a portion of the paddy land.

[91] It is significant to consider whether the meaning given to the expression “interference” in the deeming section 7 (14) would fall within the definition “evict” in section 100 of the Agrarian Development Act No. 46 of 2000. Section 7 (1) reads as follows:

*“A tenant cultivator of any extent of paddy land shall have the right to occupy and use such extent in accordance with the provisions of this Act and shall not be evicted from such extent notwithstanding anything to the contrary in any oral or written agreement by which such extent has been let to such tenant cultivator, and no person shall interfere with the occupation and use of such extent by the tenant cultivator and the landlord shall not demand or receive from the tenant cultivator any rent in excess of the rent required by this Act, to be paid in respect of such extent to the landlord.”*

[92] Section 7 (14) provides as follows:

*“(14) If any person directly or indirectly makes use of, or threatens to make use of, force, violence or restraint, or inflicts or threatens to inflict, any harm, damage or loss upon or against a tenant cultivator of any extent of paddy land in order to induce, compel or prevail upon that tenant cultivator to refrain from exercising any right or privilege conferred upon him by or under this Act, such person shall be deemed to interfere in the occupation and use of such extent by that tenant cultivator.”*

[93] However, any “interference” in the occupation and use of such extent by the tenant as set out in section 7 (1) in order to induce, compel or prevail upon the tenant cultivator to refrain from exercising any right or privilege conferred upon him by the Agrarian Development Act would

constitute an offence under section 7 (15). Section 7 (15) provides as follows:

*“Any person who contravenes the provisions of this section shall be guilty of an offence under this Act, and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding five thousand rupees.”*

[94] It seems that sections 7(1), 7(14) and 7(15) of the Agrarian Development Act No. 46 of 2000 are identical to sections 3(1), 3(14) and 3(15) of the Agricultural Lands Law No. 42 of 1973. In the case of *Kirihamy v. Dingirimaththaya* (1996) 2 Sri LR 175, the Supreme Court examined the identical definition of the word “evict” and other identical provisions in the Agricultural Lands Law No. 42 of 1973. The Supreme Court held that the **complaint of the tenant cultivator must be one of eviction and not a threat to evict or interference in the occupation or use or cultivation of the paddy land**, although such threat to evict or interference may constitute an offence within the meaning of the said Act. G.P.S.de Silva, C.J. at pages 178-179 stated:

*“It seems to me that the operative concept in the definition is the deprivation of the tenant cultivator’s right to use, occupy and cultivate the paddy land. The ‘deprivation’ may be by using direct or indirect methods. A threat to evict or interference in the occupation and use of the land does not amount to “eviction” within the meaning of the definition unless such interference results in physical dispossession. This view is supported by the terms of section 3 (8) which makes it clear that once the Agricultural Tribunal (or the Supreme Court in appeal) holds that there has been an ‘eviction’ than ‘the person evicted shall be entitled to have the use and occupation of such extent restored to him and the Tribunal shall in writing order that every person in occupation of such extent shall vacate it.....’ Section 3 (8) (b) (i) and (II). The words underlines above strongly suggest physical dispossession....*

*It seems to me that while such ‘interference’ in the use and occupation of the paddy land does not amount to eviction and the remedy postulated in section 3 (3) is not available to the tenant cultivator, yet any such interference would constitute an offense. Vide-section 3(13). The material part of section 3(13) enacts ‘If any person contravenes the provisions of this section he shall be guilty of an offence’”.*

[95] An identical provision of section 3 (8) of the Agricultural Land Law is found in section 7 (7) of Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011 as noted in paragraph 72 of this judgment. Thus, the fundamental nature of the notification to be made to the Commissioner-General under section 7 (3) the Agrarian Development Act No. 46 of 2000 is that it must be one of **eviction of the tenant cultivator** by depriving of his right to use, occupy and cultivate the whole or any part of the extent of paddy land let to him, by the use of direct or indirect methods.

[96] The complaint referred to in section 7 (3) of the Act No. 46 of 2000 cannot be a threat to evict or interference in the occupation and use of the paddy land. Such acts may not amount to “eviction” within the meaning of section 7 (3) of the Act No. 46 of 2000 unless such interference or disturbance results in the physical dispossession of the tenant cultivator.

#### **(b) Complaint of Eviction made by the Petitioner**

[97] The Petitioner had made the following complaints in respect of the dispute between the Petitioner and the Respondents:

1. The first complaint dated 02.01.2000 to the Agrarian Services Divisional Officer of the Agrarian Services Center, Homagama (page 43, (204 (e) and 142 of the brief);

2. The complaint dated 30.10.2000 to the Agrarian Services Divisional Officer of the Agrarian Services Center, Homagama (තං6 (පෝ) -page 69 of the brief);
3. The complaint of eviction dated 17.03.2001 to the Agrarian Services Divisional Officer of the Agrarian Services Center, Homagama (තං6 (පෝ) - page 70 of the brief);
4. The complaint of eviction dated 17.03.2001 to the Chairman, Mediation Board of Homagama (තං4 පෝ) -page 45 of the brief);
5. The complaint of eviction dated 19.03.2001 to the Agrarian Services Divisional Officer of the Agrarian Services Center, Homagama (තං6 (පෝ) -page 71 of the brief);
6. The complaint of eviction dated 26.03.2001 to the Assistant Commissioner of Agrarian Services, Colombo 10 (තං6 (ඡ) -page 72 of the brief);
7. The complaint of eviction dated 30.12.2001 to the Assistant Commissioner of Agrarian Services, Colombo 10 (තං6 (ඡ) -page 49 of the brief);
8. The complaint of eviction dated 08.03.2002 to the Assistant Commissioner of Agrarian Services, Colombo 10 (තං6 (ඡ) -page 51 of the brief).

[98] The first complaint of the Petitioner dated 02.01.2000 had been made to the Agrarian Services Divisional Officer when the Agrarian Services Act No. 58 of 1979 was in operation. A perusal of the first complaint made by the Petitioner to **the Agrarian Services Divisional Officer** dated 01.01.2000 (page 43 and 142 of the brief) reveals that it related to (i) an initial dispute between the Petitioner and the Respondent during a previous cultivating season over the landlord's share of paddy yield due to delayed fertilizer payments made by the Respondent; and (ii) the dispute over the statement

made by the Respondent to refrain from cultivating the paddy land during the first cultivating season of early 2001. The relevant parts of the said statements are as follows:

මාවත්ම ගාම නිලධාරී කොට්ඨාසයට අයත් ඉදුරුවල කූලුරු අක්කර ති. මේනි අයිතිකරු මාලනි ධර්මවර්ධනයි. අවුරුදු 40 කට වැඩි කාලයක් මගේ පියා වහු නුලන්දුවගේ ලිවිනිස් සිංසේර් නාමැති අය වැඩි කළේ. 1992 අවුරුදුදේ පියා මිය යිය. පියා පිටතුන් අතර සිරි කාලයේ අස්ථිනු මාලනි ධර්මවර්ධනයේ මට වහා පත්වෙරිය භාවිතෝත් දුන්නා. බෙහෙත්, කෘෂි රුසායන ආදිය ඒ භාවිතෝත් යොදාලා අස්ථින්නෝන් 1/2 අයට දුන්නා. ඉනිරි හාගය අපි ගන්නා. පියා මිය යියට පසු මට දිගටම වැඩි කරලා මාලනි ධර්මවර්ධන නාමැති අය සිරිසේන නාමැති අයට අස්ථිනු බව ගන්නා ලෙසට මුවන් වෙනුවෙන් මට උසුමක් දුන්නා. දැන් උසුම මගේ ගැන නාත. බෙහෙත් පොහොර විට මා වියදම් කරනවාට මුවන් මුදල දැන්නේ පහු වේලා. පහුණිය කන්නයේ වැඩිරුවේ නාත. එටත් පෙර කන්නයේ සිරිසේන නාමැති අයට මට කිවිවා අස්ථින්නෝන් 1/4 ක් බව ගන්නා ලෙස පෙන්වා බෙහෙත්, පොහොරවිට සඳල් නොදුන් නිසායි. නමුත් සිරිසේන අස්ථින්නෝන් 1/2 ක් දුන්නා. පහුවෙලා බෙහෙත්, පොහොරවිට මුදල දුන්නා. මෙම කන්නයේ මාලනි ධර්මවර්ධන නාමැති අය මට වැඩි කරන්න එපා කිවා. ඒ නිසා මා වැඩිරුවේ නා. වෙන තීමට දැයෙන් නාත. තියවා බලා තේරුම් ගෙන අස්ථින් කරමි.

[99] At the preliminary inquiry, the Agrarian Services Divisional Officer had also recorded a statement from the Respondent and informed the Petitioner to make a formal complaint to the Assistant Commissioner of Agrarian Services (Vide- pages 142 of the brief). The Respondent's statement to the Agrarian Services Divisional Officer at page 143 of the brief reveals that the Respondent was insisting that the Petitioner should have cultivated the paddy land according to the previously agreed landlord's share basis and unless it is so, the Respondent did not want the Petitioner to cultivate the paddy land.

ඉනින් ඒ කළින් මුවන් වැඩි කර අස්ථිනු දුන් ආකාරයට අපිට බව නොදුන්නෝ නම් ඒ අය වැඩි කරනවාට අපි කාමනා නාත. ම කියන්නේ සිලවිනියේ මට වැඩි කර අස්ථිනු දුන් පරිදිම අයටත් කරන ලෙසයි.

[100] It is crystal clear that the complaint of the Petitioner made to the Agrarian Services Divisional Officer dated 02.01.2000 is not a direct or indirect eviction of the Petitioner from the paddy land in question. It relates to a statement made by the Respondent directing the Petitioner to refrain from cultivating the paddy land in question.

[101] The learned High Court Judge has however, treated the complaint made by the Petitioner to the Agrarian Divisional Officer on 17.03.2001 (P1) as a complaint of eviction and such complaint is not a valid complaint made to the Commissioner-General in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000 as it was made to the Agrarian Services Divisional Officer. His findings at pages 7-8 and 10 of the order dated 05.04.2017 are as follows:

ගොවීන සංවර්ධන පනතේ 7(3) වගන්තිය ප්‍රකාරව, මෙටැනි පැමිණිල්ලත් ඉදිරිපත් කළ හැක්කේ කොමසාරිස් ජනරාල්වරයාට බව සඳහන් වන බැවින්, කොමසාරිස් ජනරාල්වරයාට හැර වෙනත් අයෙකු වෙත පැමිණිල්ල ඉදිරිපත් කරන්නේ නම් අඩු වශයෙන් කොමසාරිස් ජනරාල්වරයාගේ බලනෑ යම් අවස්ථාවල ත්‍රියාන්තමක කළ හැකි නිලධාරියකුවන් එම පැමිණිල්ල ඉදිරිපත් කළ යුතුය. නමුත් මෙම පරික්ෂණයට ඇඟා ඉල්ලුම්කාර වගෙන්ත් ඉදිරිපත් කරන දේ ලියවිල්ල ඉදිරිපත් කර ඇත්තේ ගොවීන යෝඛ මධ්‍යස්ථානයේ ගොවීන ප්‍රාදේශීය නිලධාරීනයේ වෙත ය. කොමසාරිස් ජනරාල්වරයාගේ බලනෑ ගොවීන ප්‍රාදේශීය නිලධාරීන්ට තිසිම අවස්ථාවක ත්‍රියාන්තමක කළ හැකි බවට ගොවීන සංවර්ධන පනතේ 38 වගන්තියෙහි සඳහන් නොවේ. එබැවින් ගොවීන සංවර්ධන පනතේ 7(3) වගන්තිය යටතේ ඇඟා ගොවීයා කුමුද මුහුණ අස් කිරීම පිළිබඳ වෙත පැමිණිල්ලක් ඉදිරිපත් කර නැති බවට පෙන්සම්කාරීය වෙනුවෙන් ගෙන ඇති මූලික විරෝධීනාවය තිබාරදී බවට මෙම අධිකරණයෙහි තීරණයයි.

[102] Section 38 of the Agrarian Development Act relates to the appointment and powers of the Commissioner-General, the Additional Commissioners, Commissioners, the Deputy Commissioners, the Assistant Commissioner and Agrarian Development Officers. Section 38 reads as follows:

*38. (1) There shall be appointed for the purposes of this Act a Commissioner-General of Agrarian Development. (hereinafter referred to in this Act as the Commissioner- General), and every reference in any other law to the Commissioner of Agrarian Services shall be dismissed to be a reference to the Commissioner General.*

*(2) There may be appointed an Additional Commissioner- General, Commissioners, Deputy Commissioners, Assistant Commissioners, Agrarian Development Officers and other officers as may be necessary for the purposes of this Act.*

- (3) *The Additional Commissioner-General and Commissioners or Agrarian Development may exercise all or any of the powers of the Commissioner-General under this Act.*
- (4) *Every Deputy Commissioner may exercise all or any of the powers of the Commissioner-General under this Act, within the area to which such Deputy Commissioner is appointed.*
- (5) *Every Assistant Commissioner may exercise all or any of the powers of the Commissioner-General under this Act, within the area to which such Assistant Commissioner is appointed.*
- (6) *Every Agrarian Development Officer expressly authorised to do so by the Additional Commissioner, the Deputy Commissioner or the Assistant Commissioner within whose area, the area of authority of such Agrarian Development Officer falls, may exercise all or any of the powers of the Commissioner General under this Act, within the area to which such Agrarian Development Officer is appointed.*
- (7) *The Additional Commissioner General, The Commissioners, the Deputy Commissioner General, every Assistant Commissioner and every Agrarian Development Officer shall in the exercise of his powers and the performance of his duties under this Act, be subject to the direction and control of the Commissioner-General...*

[103] It is true that the complaint made by the Petitioner to the Agrarian Services Divisional Officer on 17.03.2011 marked P1/ ඩං6 (පු) is one of the eviction of the Petitioner by the Respondent by employing another person to cultivate the paddy land in question. Even if it is assumed that the Agrarian Services Divisional Officer had not been expressly authorised in terms of section 38 (6) of the Act to exercise all or any of the powers of the Commissioner-General, the complaint dated 17.03.2001 was not the only complaint of eviction made by the Petitioner.

[104] The Petitioner had made two other complaints to the **Assistant Commissioner of Agrarian Services** on 17.03.2001 P1/ V6 (පු) and on 26.03.2001 30.12.2001 (දං6 (පු)) complaining that she was evicted from the first cultivating season of early 2001 (2001 Yala Season) by the Respondent

by employing another cultivator. The Petitioner in her complaint to the Assistant Commissioner dated 26.03.2001 (වා6 (ඉ)) had stated:

කරනු ලෙසේ තිබියදී මෙම කන්තයේ කුහුර වල කිරීමට ම බලපෑයාත්තුවෙන් සිටියදී ඇද ගොවිය වශයෙන් ම වෙත යෝ ගොවිපාන සේවා මධ්‍යස්ථානය යෝමාගම වෙත නිසි දැනුම් දීමතින් ගොට කුහුර අයිතිකාර ව මාලනි ධේමවර්ධන මහත්මිය වෙනත් ගොවියෙකු වෙත කුහුර සි සා ඇත. මේ සම්බන්ධව ම විසින් එම වැඩි කරන ආයගන් විස්තර විමුදු විට මෙම කුහුර දැන් තිරවුල් කර ඇති නිසා වැඩි කරන බව එම ගොට් මහතා දන්වන ලදී.

[105] The Assistant Commissioner of Agrarian Services by letter dated 01.11.2002 had clearly acknowledged that the Petitioner complained to him that she had been evicted by the Respondent from the 2001 Yala Season and thus, he directed the Respondent to allow the Petitioner to cultivate the paddy land from the 2002/2003 Maha Season (V4 (ඇ)).

[106] *Prima facie*, the Petitioner had notified the Assistant Commissioner of Agrarian Services in writing on 26.03.2001 (වා6 (ඉ)) that she was evicted physically by the Respondent during the 2001 Yala Season. The Assistant Commissioner of Agrarian Services by letter dated 01.11.2002 (වා4 (ඇ)) had entertained and notified the Petitioner that the complaint of eviction would be inquired into upon the establishment of the Agrarian Tribunals in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000.

**(c) The Validity of the Complaint addressed to the Assistant Commissioner of Agrarian Services dated 26.03.2001**

[107] The remaining question under this sub-heading is whether the complaint of eviction dated 26.03.2001 addressed to the Assistant Commissioner is void in terms of section 7 (3) of the Agrarian Development Act for the reason that it had not been addressed to Commissioner-General of Agrarian Services.

[108] The submission of Mr. Suriyaarachchi was that the complaint made to a person other than the Commissioner-General is a nullity and thus, all

subsequent steps taken are nullities. It is thus, necessary to consider the void and voidable distinction in administrative law. The “void” is a complete nullity, it is a “non-act” incapable of generating legal consequences as it is a nullity from its purported inception (Edward I Sykes & Richards RS Tracey, Cases and Materials of Administrative Law, 4th Ed. 446).

[109] In this context, the maxim *delegatus non potest delegare* is a rule of construction to the effect that where a statute provides that a named official may do this or that, Parliament intends that he alone may do so and not that anyone, else may do it. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally, unless he has been expressly empowered to delegate it to another. (*Edirisinghe v. Commissioner of National Housing* 75 N.L.R. p. 273).

[110] Although the discretion conferred by statute is *prima facie* intended to be exercised by such authority alone as intended by Parliament, this intention may be negated by any contrary indications found in the scope or object of the statute (S. A. de Smith, Judicial Review of Administrative Action, 2nd Edition, p. 284). In this modern-day administration and expansion of powers and functions exercised by public officers after the 13th Amendment to the Constitution was introduced, the Commissioner-General cannot be expected as the head of the administrative body to perform each and every function himself. Thus, it became necessary that the Legislature confers wide powers to Deputy Commissioners and Assistant commissioners who are appointed in various parts of the country for the purpose of the Act.

[111] Section 38 of the Act makes provision for the appointment of the Commissioner-General, additional Commissioner-General, Deputy Commissioner General, Commissioners, Assistant Commissioner and Divisional Officers for the purpose of the Act. Section 38 (5) provides that an Assistant Commissioner can exercise all or any of the powers of the Commissioner-General under this Act, within the area to which such Assistant Commissioner is appointed. Once the Assistant Commissioner is expressly authorised by the statute to exercise all or any of the powers of the Commissioner-General, such powers can be exercised by the Assistant Commissioner on behalf of the Commissioner-General, as authorised by the Statute.

[112] It is significant to consider the nature of the decisions which are to be required to be performed by the Commissioner-General in the exercise of his individual judgment and discretion in entertaining and referring the complaint to the Tribunal under section 7 (3). The Commissioner-General is not exercising any discretion and judgment in entertaining complaints of eviction and I do not see any such intention indicated in the language, scope or object of section 7 (3) of the Act. All what the Commissioner-General has to do under section 7 (3) is to entertain the complaint of eviction and refer the matter to the Tribunal directing it to hold an inquiry.

[113] In the circumstances, it is not necessary for the Commissioner-General to perform all ministerial acts of entertaining complaints personally at his Office in Colombo when such ministerial tasks of entertaining complaints can be performed by the Deputy or Assistant Commissioners who are appointed under the Act within the area to which they are appointed under section 38 (4) and 38 (5). Thus, once the Assistant Commissioner is authorised to entertain complaints of eviction in

their respective areas, such complaints can be referred to the Commissioner-General to be referred to the Tribunal for the purpose of holding an inquiry as it has happened in the present case.

[114] Thus, the maxim *delegatus non potest delegare*, gives way in the performance of administrative or ministerial tasks by subordinate officers who are authorised by the statute itself to exercise such powers or expressly authorised to do by the delegated party, subject to the direction and control of the delegated party. Thus, the powers and duties conferred or imposed on the Commissioner-General under this Act may also be exercised by the Deputy Commissioners or Assistant Commissioners on his behalf, subject however, to the direction and control of the Commissioner-General.

#### **Whether compliance with section 7 (3) is mandatory or directory**

[115] On the other hand, the question arises whether the non-compliance with section 7 (3) is mandatory or directory, when the Assistant Commissioner is authorised by the Act to exercise all or any of the powers of the Commissioner-General within the area to which he is appointed. According to Crawford's Statutory Construction, 3rd edn. Vol. III, p. 104:

*"a mandatory statute is one whose provisions or requirements, if not complied with, will render the proceedings to which it relates illegal and void, while a directory statute is one where non-compliance will not invalidate the proceedings to which it relates". Crawford further states that the basic test by which to determine whether the requirement is essential or not, is to consider the consequences of the failure to follow the statute (supra-, p. 518).*

[116] Bindra's Interpretation of Statutes, 10<sup>th</sup> edn. p 1012 refers to the case of *Miller v Latewood Housing Co.* (932) 125 Ohio St. 152 in which the Ohio Court examined as to how a provision of a statute is mandatory or directory:

*“Whether a statutory requirement is mandatory or directory depends on its effect. If no substantial rights depend on it and no injury can result from ignoring it, and the purpose of the legislature can be accomplished in a manner other than that prescribed and substantially the same results obtained, then the statute will generally be regarded as directory, but if not, it will be mandatory”.*

[117] As far as an official action of public officials is concerned, Crawford states at pages 529-531 as follows:

*“As a general rule, a statute which regulates the manner in which public officials shall exercise the power in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order and convenience and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form or if nothing is stated regarding the consequences or effect of non-compliance, the indication is all the stronger that it should not be considered mandatory. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive or directory in form, is in fact peremptory or mandatory as a general rule..”*

[118] In the present case, the Act does not declare what result shall follow in non-compliance with the requirement of not sending the complaint to the Commissioner-General himself, whereas the Act expressly authorises an Assistant Commissioner to exercise all or any of the powers of the Commissioner-General. On the other hand, the non-compliance is unlikely to injure or impair the public or private rights of third persons or cause serious inconvenience or injustice to others or invalidate any act performed by the Assistant Commissioner who is expressly authorised by the Act. .

[119] In the circumstances, the failure to notify Commissioner-General is only directory when the Agrarian Development Act has expressly authorised the Assistant Commissioner to exercise all or any of his powers

and such failure did not become the complaint addressed to the Assistant Commissioner void under section 7 (3) of the Act unless something in the body of the Act indicates the contrary.

[120] In the circumstances, I hold that the complaint of eviction notified to the Assistant Commissioner of Agrarian Development dated 26.03.2001 by the Petitioner can constitute a valid complaint made to the Commissioner-General of Agrarian Development under section 7 (3) of the Act read with section 38 (5) of the said Act..

**Whether the complaint of eviction is prescribed under section 7 (4) of the Act**

[121] The learned High Court Judge has taken the view that (i) though the alleged eviction had taken place by the time the Petitioner sent the letter dated 17.03.2011 (P1/V6(എ), the Petitioner had complained about the eviction to the Commissioner-General under section 7(3) of the Agrarian Development Act only on 19.03.2015 as stated in Form "A" (ഒ3); (ii) the Petitioner had informed the Minister of Agricultural Development of her grievances on 09.07.2009 as evident from letter dated 28.09.2009 marked ഒ5(എ); (iii) the Petitioner had made the complaint to the Commissioner-General 8 years after the date of the alleged eviction; and thus, the Petitioner's complaint is prescribed in terms of section 7(4) of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2001.

[122] As noted, the complaint of eviction had been made to the Assistant Commissioner on 26.03.2001 stating that the Petitioner had been evicted by the Respondent from the first cultivating season of early 2001 with the assistance of another cultivator. The Assistant Commissioner has acknowledged in his letters dated 03.05.2002 (ഒ4 (സ) and 01.11.2002 (ഒ4 (സ)) that the Petitioner had made a complaint of eviction. By letter dated 05.06.2002 (ഒ5 (എ), the Assistant Commissioner has stated that the

eviction of a tenant cultivator has to be referred to the Agrarian Tribunals under section 7 (3) of Act No. 46 of 2011 and accordingly, the complaint will be dealt with after the establishment of the Agrarian tribunals.

[123] The eviction as per the letter dated 26.03.2001 marked අං6(ඡ), had taken place during the first cultivating season in early 2001 and the complaint of eviction had been made on 26.03.2001 and hence, the said complaint of eviction is well within the prescribed period of 6 months from the date or period of eviction which had taken place during the first cultivating season of early 2011.

[124] After the Assistant Commissioner entertained the complaint of the Petitioner dated 26.03.2001, the complaint should have been referred to the Tribunal in terms of section 7 (3) of the Act. In the meantime, the Agrarian Development Act No. 46 of 2010 was amended by the Agrarian Development (Amendment) Act No. 46 of 2011 which came into operation on 22.11.2011, long after the complaint of eviction was addressed to the Assistant Commissioner on 26.03.2001. There was no prescribed form of complaint to be made together with an affidavit other than to make the complaint in writing under section 7 (3) of the Act No. 46 of 2011. Yet, the Tribunals were not established as set out in the letter of the Assistant Commissioner dated 05.06.2002 (අං5 (ඝ)).

[125] The Minister in Charge of Economic Development promulgated Agrarian Development (Inquiry Procedure) Regulations No. 1 of 2013 by Gazette Extraordinary, dated 05.03.2011. The said Regulations *inter alia*, mandated that an application or complaint made or referred to the Agrarian Tribunal shall be substantially in Form “A” set out in the Schedule thereto and shall be accompanied by an affidavit. However, the Agrarian Tribunals, were not established even after the promulgation of 2013 Rules as the Ministry was making arrangements to repeal the Act No.

46 of 2000 and introduce a brand new Act to address the issues that have arisen in the agricultural sector. This is evident from the letter of the Additional Secretary, Ministry of Agriculture Development dated 28.09.2009 (තං5 (ප)).

[126] As the Tribunals were not established under the Act, the Petitioner had filed an action in the District Court on 11.11.2002 seeking a declaration that she is the tenant cultivator and ejectment of the Respondent. The said case was dismissed on 06.05.2005 as the District Court had no jurisdiction to decide the question of tenancy rights of tenant cultivators (තං4 (උ) - තං4 (ඃ)).

[127] The Petitioner had thus, submitted a complaint dated 19.05.2015 substantially in Form “A” (තං3 at page 42, 166 of the brief) together with an affidavit dated 18.03.2015 (page 165 of the brief) as set out in the Schedule to the Regulations dated 15.03.2013, merely to comply with the two requirements set out in rule 3 (1) of Agrarian Development (Inquiry Procedure) Regulations No. 1 of 2013. The words “පැමිණිල් නියමානුකූල කිරීම” on the top of the application dated 19.03.2015 (page 166 of the brief) clearly indicate that it was submitted to comply with the said Rules 3(1) published by the Minister, long after the complaint dated 26.03.2011 was addressed to the Assistant Commissioner. The inquiry commenced in 2015 after the establishment of the Tribunals and the formalities in compliance with the said Rule 3 (1) were fulfilled by the Petitioner.

[128] Hence, the Petitioner cannot be penalized for administrative delays on the part of the Commissioner-General of Agrarian Services in establishing Agrarian Tribunals when the formalities set out in Rule 3 (1) of the Regulations were non-existent when the complaint of eviction was made by the Petitioner on 26.03.2001. The learned High Court Judge has erred in calculating the prescriptive period from the date of the formal

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complaint made on 19.03.2015 by the Petitioner to comply with the requirements set out in Rule 3 (1) of Regulations dated 15.03.2013 disregarding the fact that those Rules were non-existent when the Petitioner made the complaint of eviction on 26.03.2001.

[129] The learned High Court Judge has clearly erred in holding that although the eviction had taken place on 17.03.2001 (P1/எா6(ப்த), the complaint of eviction had been made to the Commissioner-General on 19.03.2015 (எா3) and therefore, the complaint of eviction made to the Commissioner-General is out of time under section 7 (4) of the Act.

[130] I hold that the Petitioner's complaint of eviction dated 26.03.2001 is well within the prescribed period of 6 months from the date of the eviction, which according to the Petitioner had taken place in the first cultivating season in 2011

#### **Delay in filing the Revision Application**

[131] Mr. Suriyaarachchi complained that the Petitioner filed this application in the Court of Appeal after a lapse of 10 months from the order of the High Court and the reason given by the Petitioner for the delay, namely that she filed a Leave to Appeal Application in the Supreme is not a valid reason. The question whether the delay is fatal to an application in revision depends on the facts and circumstances of the case. In this context, it is appropriate to quote from His Lordship former Chief Justice G.P.S. De Silva, in the case of *Gnanapandithan v. Balanayagam* (1998) 1 Sri LR 391, where he held

*"The question whether the delay is fatal to an application in revision depends on the facts and circumstances of the case. Having regard to the very special and exceptional circumstances of the case, the appellants were entitled to the exercise of the revisionary parties of the Court of Appeal."*

[132] It is settled law that if the impugned order or part thereof is manifestly erroneous and is likely to cause grave injustice, the court should not reject the application on the ground of delay alone (*Caroline Nona and Others v. Fedrick Singho and Others* (2005) 3 Sri LR 176). In the case of *Biso Menike Vs. Cyril de Alwis* 1982 1 Sri LR 368, Sharvananda, J. (as he then was) at 379 observed :

*"When the Court has examined the record and is satisfied the order complained of is manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically."*

[133] The order of the learned High Court Judge was made on 05.04.2017. This revision application has been made to this Court on 16.02.2018. The Petitioner had made a Leave to Appeal Application to the Supreme Court against the said order dated 05.04.2017, but the said application was withdrawn to invoke the revisionary jurisdiction of this Court as the Supreme Court had no jurisdiction to hear appeals from the orders of the Provincial High Court made in the exercise of revisionary jurisdiction. The Petitioner has clearly explained the reasons for the delay in preferring this application to this Court.

[134] Article 138 of the Constitution has conferred revisionary jurisdiction on the Court of Appeal to make necessary orders as may be necessary for the ends of justice where a miscarriage of justice has occurred. The Petitioner has pleaded and satisfied that exceptional circumstances exist which would invite this Court to exercise its powers in revision. As noted, the Petitioner has satisfied that the impugned order is manifestly erroneous

and caused a miscarriage of justice that has deprived the Petitioner of her right to be heard by the Agrarian Tribunal in respect of her eviction from the paddy land in question.

[135] The Petitioner has further satisfied that the impugned order has caused a manifest miscarriage of justice when she had been penalized for the administrative delays on the part of the Commissioner-General in not establishing Agrarian Tribunals and the High Court had erroneously calculated the prescriptive period from the date of a formal complaint made by her in compliance with Rules promulgated long after the complaint of eviction was entertained.

### **Conclusion**

[136] For those reasons, the judgment of the learned High Court Judge of the Western Province holden in Colombo dated 05.04.2017 is set aside and the relief prayed for in paragraph (c) of the prayer to the Petition of the Petitioner dated 16.02.2018 is allowed. The application in revision is partly allowed.

I make no order as to costs of this application.

**JUDGE OF THE COURT OF APPEAL**

Shiran Gooneratne J.

I Agree.

**JUDGE OF THE COURT OF APPEAL**