

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

In the matter of an Appeal in terms of
Article 154 (G) (6) of the Constitution of
the Democratic Republic of Sri Lanka.

C.A. No. PHC/0106-09

HC Hambantota No. HC. WA. 35/2007

Agrarian Services Hambantota

H.A/04/Misc. /2006/Udayala

1. A.J.P. Somapala

No. 64, Dimbulgoda, Medamulana.

2. J. Piyadasa

Aththanayala, Medamulana.

3. R.Premasiri

Paradaawatte, Dimbulgoda,
Medamulana.

4. W. Nishshankalal

Muruthwelagedara, Morayaya North
Wekandawala.

5. A. Sayindara (K.G. Gunasena)

223, MorayayaNorth
Wekandawela.

PLAINTIFFS

-Vs-

K.I. Rathnasinghe,

“Sisira”, Agrahera, Weeraketiya.

RESPONDENT

AND BETWEEN

1. A.J.P. Somapala
No. 64, Dimbulgoda, Medamulana.
2. W. Nishshankalal
Muruthwelagedara, Morayaaya North,
Wekandawala.
3. K.G. Gunasena,
223, MorayayaNorth
Wekandawela.

PLAINTIFFS- PETITIONERS

-Vs-

1. K.I. Rathnasinghe,
“Sisira”, Agrahera, Weeraketiya.
2. E.S. Pathirana,
Agrahera, Weeraketiya.
3. J. Piyadasa
Aththanayala, Medamulana.
4. R.Premasiri
Paradawatte, Dimbulgoda.
5. Assistant Commissioner Agrarian
Development, Agrarian Development
Office, Hambantota.

RESPONDENT - RESPONDENTS

AND NOW BETWEEN

K.I. Rathnasinghe,
“Sisira”, Agrahera, Weeraketiya.

RESPONDENT - RESPONDENT -
APPELLANT

-Vs-

1. A.J.P. Somapala
No. 64, Dimbulgoda, Medamulana.
2. W. Nishshankalal
Muruthwelagedara, Morayaya North,
Wekandawala.
3. K.G. Gunasena
223, Morayaya North, Wekandawela.

PLAINTIFFS- PETITIONERS-
RESPONDENTS

4. E.S. Pathirana,
Agrahera, Weeraketiya.
5. J. Piyadasa
Aththanayala, Medamulana.
6. R.Premasiri
Paradawatte, Dimbulgoda.
7. Assistant Commissioner Agrarian
Development, Agrarian Development
Office, Hambantota.

RESPONDENT-RESPONDENT
RESPONDENTS

- BEFORE** : Shiran Gooneratne J. &
Dr. Ruwan Fernando J.
- COUNSEL** : Anil Silva, P.C. for the Respondent-

Respondent-Appellant

Dr. Sunil Cooray with K. Amila Kiripitiya

and Sudarshani Cooray for the 1st and 3rd

Petitioner-Respondents

ARGUED ON : 23.06.2020

WRITTEN SUBMISSIONS

: 15.10.2018 (by the Respondent-

Respondent-Appellant)

19.10.2018 (1st and 3rd Plaintiffs-

Petitioners-Respondents)

DECIDED ON : 18.09.2020

Dr. Ruwan Fernando, J.

Introduction

[1] This is an appeal from the judgment of the learned High Court Judge of Hambantota dated 25.05.2009 wherein the learned High Court Judge issued a writ of certiorari sought by the Plaintiffs-Petitioners-Respondents to quash the determination dated 07.09.2007 made by the 7th Respondent-Respondent marked "P8" dismissing the complaint of eviction made by the Plaintiffs-Petitioners- Respondents.

Factual Background

[2] The Respondent-Respondent-Appellant (hereinafter referred to as the Appellant) who was the Plaintiff in the District Court of Hambantota Case bearing No. P/22000 instituted a partition action by Plaintiff dated

21.11.1997 to partition the land called "Kahabiliyahena" in extent of 12 acres and 26 perches as morefully described in paragraph 2 of said Plaintiff. [3]The Appellant has specifically admitted in paragraph 10 of the Plaintiff that the 2nd Defendant (Sayindara) and 3rd Defendant (Nikulas) were the tenant cultivators of the said land and thus, they were named as the 2nd and 3rd Defendants in the Caption of the Plaintiff. The Appellant claimed that the following parties were entitled to undivided rights according to the pedigree pleaded in the Plaintiff in the following manner:

The Plaintiff	-	undivided 11/12
The 1st Defendant	-	undivided 1/12

[4]After trial, the judgment was entered by the District Court directing that the land depicted in the Preliminary Plan bearing No. 3992 dated 30.08.2004 be partitioned between the Plaintiff and the 1st Defendant. The Final Decree was entered on 14.03.2005 (1V4) and in terms of the Final Decree, the Plaintiff was entitled to lot 1 in extent of 11 acres 23.8 perches depicted in the Final Partition Plan. The Plaintiff made an application for the delivery to her of possession of the said lot 1 and the Fiscal delivered possession of lot 1 of the said Final Plan to the Plaintiff on 26.10.2006 (V1).

Complaint of eviction to the Assistant Commissioner of Agrarian Services

[5] On 08.05.2007, the Plaintiffs-Petitioners-Respondents (hereafter referred to as the Respondents) who claimed that they were the tenant cultivators of the land called "Kahabiliyahena" for the last 30 years made a complaint to the 7th Respondent-Respondent who was the Assistant Commissioner of Agrarian Development, Hambantota (hereinafter referred to as the 7th Respondent) in writing stating that they were evicted by the Appellant.

[6] Upon a request made by the Walasmulla Police by letter dated 09.05.2007, the 7th Respondent by letter dated 16.05.2007 informed the Officer-in-charge of the Walasmulla Police that the names of the tenant cultivators were clearly set out in the Agricultural Lands Register and thus, requested the Officer-in-charge of Police to take necessary steps to secure the rights and ensure the security of the said tenant cultivators (P7).

[7] The 7th Respondent held an inquiry through an Agrarian Services Officer into the complaint of eviction (P6) made by the Respondents and made the determination on 07.09.2007 (P8) dismissing the complaint of eviction made by the Respondents.

[8] A perusal of the determination of the 7th Respondent reveals that he has dismissed the complaint of eviction not for the want of jurisdiction in terms of the provisions of the Agrarian Development Act No. 46 of 2000 but purely on the basis that (i) in terms of the Final Decree of the Partition action in D.C. Hambantota Case No. P/2200 (P5), the Appellant was declared entitled to the absolute ownership of the paddy land in question; (ii) the Respondents had not appealed against the said judgment; (iii) the Fiscal had delivered possession of the paddy land to the Appellant; and (iv) thus, the Appellant is the absolute owner and the owner cultivator of the paddy land in dispute.

Application for writ of certiorari and mandamus to the High Court

[9] Being aggrieved by the said order of the 7th Respondent, the Respondents in the present appeal filed an application in the Provincial High Court of Hambantota and prayed for the following reliefs:

- (a) a writ of certiorari to quash the determination of the 7th Respondent dated 07.09.2007 marked “P8”;

(b) a writ of mandamus directing the 7th Respondent to act according to the Final Decree entered in the said Partition Case bearing No. 2200/P marked “P5”.

Decision of the High Court

[10] After inquiry, the learned High Court Judge by judgment dated 25.05.2009 issued a writ of certiorari quashing the determination of the 7th Respondent dated 07.09.2007 marked “P8” for the following reasons:

1. The Appellant who was the Plaintiff in the said partition action has admitted that Sayindara and Nikulas were named as the 2nd and 3rd Defendants on the basis that were the tenant cultivators of the said paddy land and the Plaintiff sought a partition without prejudice to the rights of the said tenant cultivators;
2. In terms of section 7 (2) of the Agrarian Development Act No. 46 of 2000, a tenant cultivator shall be regarded as the tenant cultivator of any extent of paddy land which is purchased by any person under the partition law or which is allotted to a co-owner under a decree of partition;
3. The 7th Respondent has wrongfully dismissed the complaint of eviction on the sole basis that the Appellant was declared entitled to the absolute ownership of the paddy land in dispute and thus, the rights of the tenant cultivators were not reserved by the Final Decree entered in the partition action;
4. The 7th Respondent had no jurisdiction to inquire into the complaint of eviction under the provisions of the Agrarian Development Act No. 46 of 2000 as he was only obliged to refer the matter to the Agrarian Tribunal for the purpose of holding an inquiry as required by section 7 (3) of the said Act No. 46 of 2000.

Appeal

[11] Being aggrieved by the said judgement of the learned High Court Judge, the Appellant has filed this Appeal seeking to set aside the said judgment dated 25.05.2009 and praying for an order declaring that the Appellant is the owner-cultivator of the land in dispute.

Grounds of Appeal

[12] At the hearing, the learned President's Counsel for the Petitioner confined his submission to the following ground of appeal, namely:

1. The learned High Court Judge has erred in issuing a writ of certiorari quashing the decision of the 7th Respondent dated 07.09.2007 on the basis that the 7th Respondent had no jurisdiction under the Agrarian Development Act No. 46 of 2000 to hold an inquiry and make a decision when the 7th Respondent had full power and authority under section 6(2) of the Interpretation Ordinance as the Agrarian Tribunals had not been established upto the time of the complaint of eviction.

[13] On the other hand, Dr. Sunil Cooray, the learned Counsel for the 1st to 3rd Respondents submitted that:

1. The 7th Respondent has failed to consider that the Appellant has admitted in the partition action that Nikulas and Sayindara who were named as 2nd and 3rd Defendants were the tenant cultivators of the paddy land in question;
2. The 7th Respondent has made a fundamental error in dismissing the complaint of eviction on the ground that the Appellant has become the absolute owner of the paddy land in dispute in terms of the Final

Decree of the District Court of Hambantota partition action bearing No. P/2200 when the rights of the tenant cultivators are never ousted by the Final Decree of the partition action whereas their rights are reserved by section 7(2) of the Agrarian Development Act No. 46 of 2000 read with section 48 of the Partition Law;

3. The 7th Respondent had no jurisdiction to hold an inquiry and decide the question of eviction of the tenant cultivator in terms of section 7 (3) of the Agrarian Development Act No. 46 of 2000.

Matters to be decided on Appeal.

[14] This Court is invited by the parties to decide the following matters:

1. Whether the 7th Respondent had the authority to hold an inquiry and decide the question whether or not a tenant cultivator has been evicted under the provisions of the Agrarian Development Act No. 46 of 2000 after the Agrarian Services Act No. 58 of 1979 was repealed by the Agrarian Development Act No. 46 of 2000;
2. Whether section 6 (2) of the Interpretation Ordinance applied to the present case and if so, whether the 7th Respondent had full powers to hold an inquiry and decide the matter until the Agrarian Tribunals are established under the provisions of the Agrarian Development Act No. 46 of 2000;
3. Whether there was an error on the face of the record of the determination of the 7th Respondent in dismissing the complaint of eviction, not on the basis of want of jurisdiction, but in terms of the Final Decree of the partition action, the Appellant has become the absolute owner and the owner cultivator of the said paddy land.

Legal grounds for the writ of certiorari

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

1. acts in excess or absence of their authority; or
2. acts in violation of natural justice; or
3. where there is an error on the face of the proceedings.

The authority of the 7th Respondent to hold an inquiry on the complaint of eviction

[16] At the hearing, Mr. Anil Silva, the learned President's Counsel for the Appellant strenuously argued that the Agrarian Tribunal had not been established under the Agrarian Development Act No. 46 of 2000 at the time the complaint of eviction was made and hence, the 7th Respondent could not have forwarded the complaint to the Tribunal. He submitted that in a situation where the mechanism for the resolution of disputes under the Agrarian Development Act No. 46 of 2000 has not come into operation by establishing the Agrarian Tribunals, the repeal of that part of the Agrarian Services Act does not take effect until the Agrarian Tribunals are established under the provisions of the Agrarian Development Act No. 46 of 2000. His contention was that section 6 (2) of the Interpretation Ordinance applied and thus, the inquiring officer correctly held an inquiry and decided the matter.

Repeal of Act No. 58 of 1979

[17] The Agrarian Services Act No. 58 of 1979 as amended by the Agrarian Services (Amendment) Act No. 4 of 1991 was repealed by section 99 (1) of the Agrarian Development Act No. 46 of 2000. The Agrarian Development Act No. 4 of 2000 came into operation on

18.08.2000. Section 99 (1) of that Act provides for repeal and reads as follows: -

“99 (1) - The Agrarian Services Act No. 58 of 1979 is hereby repealed”.

Effect of repeal:

[18] The general effect of repealing a statute is to obliterate it as 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 purposes of those actions which were commenced, prosecuted and concluded whilst it was an existing law (*Watson v. Winch* (1916) 1 KB 688 & Bindra's Interpretation of Statutes, 10th Ed. p. 1529). The general rule of interpretation that is contained in section 6 (1) of the Interpretation Ordinance of Sri Lanka is as follows:

“Whenever any written law repealing either in whole or part a former written law is itself repealed, such repeal shall not, in the absence of any express provision to that effect, revive or be deemed to have revived the repealed written law, or any right, office, privilege, matter or thing not in force or existing when the repealing written law comes into operation”.

[19] Thus, the general rule is that when an Act of Parliament is repealed, in the absence of any contrary intention, it must be considered as if it had never existed. Since the Agrarian Services Act No. 58 of 1979 had been repealed and re-enacted by the Agrarian Development Act No. 46 of 2000, it is necessary to refer to the statement of objects at the time of introducing the Agrarian Development Act in 2000 in Parliament in order to find out the legislature's intention in providing for such a repeal.

Repealing Act- Statement of purpose of the statute

[20] The significance of ascertaining the statement of purpose of the statute in the canon of interpretation was succinctly stated by S.K. Das J., in the Indian Supreme Court case of *S.C. Prashar and Anr. v. Vasantsen Dwarkadas and Ors.* AIR 1963 SC. 1356, at para 23 as follows:

"although the statement of objects and reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation, if the words used therein are clear enough, statement of objects and reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at"

[21] In the same case, J.L. Kapur J., stated at para 38:

"In construing an enactment and determining its true scope it is permissible to have regard to all such factors as can legitimately be taken into account to ascertain the intention of the legislature s such as the History of the Act, the reasons which led to its being passed the mischief which had to be cured as well as the cure as also the other provisions of the statute".

Repealing Act- Purposive or functional approach

[22] Statutes are generally constructed, as far as possible, to avoid absurdity or futility, and a statute should be construed in a manner to give it validity rather than invalidity-*ut res magis valeat quam pereat* (*Nandasena v Senanayake* (1981) 1 Sri LR 244, 245). It is settled in the construction of a statute that “a statute is designed to be workable and the interpretation thereof should be to secure that object, unless crucial omission or clear direction makes that end unattainable” (Lord Dunedin in *Whitney v Inland Revenue Commissioner* (1925) AC 27,52). As such, any construction of a statute which has consequences of rendering the purposeless the exercise of authority without jurisdiction, is a futility (supra).

[23] While interpreting a repealing Act, a purposive approach is generally adopted and the statement of objects and reasons may also be referred to for that purpose (*Thyssen Stahlunion GmbH v. Steel Authority of India* AIR, 1999 SC 3923). In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act, whether that purpose or object is expressly stated in the Act or not, shall be preferred to a construction that promotes that purpose or object (DC Pearce and RS Geddes, *Statutory Interpretation* (LexisNexis, 8th edn, 2014), pp 41-51, paras [2.7]-[2.14].

[24] According to Bindra's Interpretation of Statutes 10th Ed, p. 341, a statute which confers a benefit on individuals or a class of persons by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive acts from individuals with whom they stand in certain relations is a beneficial legislation. Although a section of a statute has to be interpreted according to its plain words and without doing violence to the language used by the legislature, the beneficial piece of legislation should be interpreted in a purposive manner which would effectuate the object of the welfare or beneficial legislation (*Nagpur District Central Co-operative Bank v. State of Maharashtra*, 1987 Mah LJ 593).

[25] Thus, a welfare or beneficial legislation such as the Agrarian Services Act or the Agrarian Development Act should be interpreted in such a way that it advances the object and the purpose of the legislation and gives it a full meaning and effect, so that the ultimate social objective is achieved (*Workmen of Indian Standards Institution v. Management of Indian Standards Institution*, (1976)1 LIJ 33,39 (SC)).

[26] It is well-settled canon of construction that in construing the provision of beneficial enactments, the court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory (*Chinnamar Kathian alias Muthu Gounder v. Ayyavoo alias Periana Gounder* AIR 1982 SC 137). Thus, a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intent underlying its enactment (supra). It becomes the duty of the Court, thus, to interpret a provision, especially a welfare or beneficial statutes, by giving it a wider meaning rather than a restrictive one.

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

[28] It is not in dispute that the complaint of eviction made by the present Respondents was received by the 7th Respondent on 08.05.2007 "P6". The legislative intent as regards the machinery of holding inquiries into complaints of eviction received after the repeal of the Act No. 58 of 1979 and the persons who are authorized to perform the duty of holding such inquiries should be gathered by reading the relevant provisions of the Agrarian Development Act No. 46 of 2000 in its entirety. Furthermore, the context, object and purpose of the Act and its operation within the overall scheme of the Agrarian Development Act No. 46 of 2000 as they relate to complaints of eviction should also be taken into account.

Purpose of the Repeal of the Agrarian Services Act

[29] It is apparent from the above citations that the statement of objects and reasons of the statute being repealed, could be legitimately taken into account for ascertaining the legislative intention. In view of the saving clause in section 99 (2) of the Agrarian Development Act, the important question of law regarding jurisdiction of an inquiring officer to hold inquiries into complaints of eviction arises with reference to the context provided by the circumstances leading to the repeal, the history of legislation and the statement of objects and reasons of the statute.

[30] The principal objects of the Agrarian Development Act No. 46 of 2000 as stated in the Preamble are (i) to provide for matters relating to landlord and tenant cultivators of paddy lands; (ii) for the utilization of agricultural lands in accordance with agricultural policies; (iii) for the establishment of Agrarian Development Councils, Agrarian Tribunals and Land Bank; and (iv) to provide for the repeal of the Agrarian Services Act No. 58 of 1979.

[31] The Agrarian Development Act No. 46 of 2000 and the Agrarian Development (Amendment) Act No. 46 of 2011 made significant changes to achieve the above mentioned objects stated in its Preamble. Some of the significant changes include (i) persons who are deemed to be tenant cultivators for the purposes of the Act; (ii) procedure to be followed where possession of the extent of paddy land cannot be awarded to a person deemed to be a tenant cultivator including the compensation to be paid to such tenant cultivators; (iii) devolution of rights of a tenant cultivator, successor and the right of the Commissioner-General to determine disputes regarding devolution of rights of tenant cultivators; (iv) exemption of paddy lands owned by temples from tenant cultivators' rights; (v)

utilization of agricultural lands in accordance with agricultural policies by issuing supervision and dispossession orders; (vi) determination of a land to be a paddy land; (vii) establishment of Agrarian Tribunals, Farmers' Organisations; Agrarian Development Councils and Land Bank and (viii) irrigation work and the management of irrigation water; and (ix) the right of appeal from the decisions of the Board of Review to be conferred on the High Court.

[32] The legislature further laid down an exhaustive procedure to be followed by the Agrarian Tribunals and the Board of Review in respect of inquiries and appeals. (See- Agricultural Development (Amendment) Act No. 46 of 2011-sections 7, 9, 11, 12 and 13). Further, the Minister of Economic Affairs made Regulations and published them in Gazette Extraordinary No. 1801/36 dated 15.03.2013 under section 95 of the Agrarian Development Act No. 46 of 2000 as amended by Act No. 46 of 2011 as regards the inquiry procedure before Agrarian Tribunals and the appellate procedure before Board of Review. The changes made by the Minister in the said Regulations relate to the form of the application and rules of procedure before the Tribunals and the Board of Review.

[33] It is apparent that the legislature intended *inter alia*, to establish separate Agrarian Tribunals for the purpose of holding inquiries into complaints of eviction and authorise such Tribunals consisting of retired judges with 7 years judicial experience or qualified retired public officers with 7 years experience at executive level in the field of agrarian services, to exercise such duties instead of mere agrarian Services officers who were appointed under the repealed Act as inquiring officers.

[34] It is also apparent that the legislature intended to appoint qualified and independent persons to the Board of Review with wide knowledge of law

and experience for the purpose of establishing the Board of Review to deal with appeals from Agrarian Tribuans and such appointments were to be made by the Judicial Service Commission instead of the Commsisioner under the repealed Act.

Remedy of the tenant-cultivator under Act No. 46 of 2000

[35] The remedy of the tenant cultivator who complains of eviction under the Agrarian Services Act No. 58 of 1979 as amended by the Agrarian Services (Amendment) Act No. 4 of 1991 is set out in section 5 (3) of the said Act. In terms of section 5 (3), any inquiry into a complaint of eviction shall be held by an inquiring officer appointed by the Commissioner. Section 5 (3) is as follows:

"(3) Where a tenant cultivator of any extent of paddy land notifies the Commissioner, in writing, that he has been evicted from such extent, such Commissioner shall cause an inquiry to be held by an Inquiry Officer for the purpose of deciding the question whether such person had been evicted.

(4) The notification referred to in subsection (3) shall be made within one year from the date of such eviction:

Provided, however, that where such tenant cultivator has been evicted at any time within two years prior to the date of commencement of this Act, such notification shall be made within two years of the date of commencement of the Act".

[36] The Agrarian Services Act No. 58 of 1979 was repealed by Parliament by the Agrarian Development Act No. 46 of 2000 and the new Act came into operation on **18.08.2000**. Section 7 (3) of the Agrarian Development Act No. 46 of 2000 as amended by the Agrarian Development (Amendement) Act No. 46 of 2011 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** directing the Tribunal to hold an inquiry for deciding the question whether or not a tenant cultivator has been evicted.

[37] 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 as amended by Act No. 46 of 2001 as follows:

"(3) 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.

(4) The notification referred to in subsection (3) shall be made within 6 months from the date of such eviction".

[38] It is crystal clear that the scope of the inquiry under section 7 (3) of the Act No. 46 of 2000 as amended is to decide the question (i) whether or not the person who made the complaint is a tenant cultivator; and if so, (ii) whether or not such tenant cultivator has been evicted from the paddy land in question in violation of the provisions of the Agrarian Development Act No. 46 of 2000.

[39] The decision whether or not not a tenant cultivator has been evicted from the paddy land in question has been thus, conferred by the legislature exclusively on the Agrarian Tribunal established under the provisions of the Agrarian Development Act No. 46 of 2000. An inquiring officer of the Department of Agrarian Services, who was appointed by the Commissioner in terms of the provisions of the Agrarian Services Act No. 46 of 1979 or Act No. 46 of 2000 has no such authority to perform the

duty of holding an inquiry and decide the question whether or not the tenant cultivator has been evicted in violation of the provisions of the Agrarian Development Act No. 46 of 2000.

Saving clause in the Agrarian Development Act No. 46 of 2000 and its effect on the repeal

[40] Section 99 (2) of the Agrarian Development Act No. 46 of 2000 however, provides for a saving clause. It contains 8 categories of saving clauses. A different rule of interpretation may apply to a case where there is a saving clause in an Act for the purposes of those actions or suits which were commenced and prosecuted while the repealed law was an existing law.

[41] The function of a saving clause is to preserve certain existing rights, remedies or privileges from destruction (Horack, Cases and Materials on Legislation, 2nd Ed. 572) and thus, a saving clause is intended to narrow the effect of the enactment to which it refers, so as to safeguard the existing rights or to continue such existing rights from its operation (Francis Bennion, Statutory Interpretation, 3rd Ed. 358). A saving clause may, thus, save the existing right from the operation of the whole of the new Act or a chapter or Part of the new act or a particular section or sub-section to which it is attached (P.M. Bakshi, Interpretation of Statutes, 1st Ed. 2011, 908).

[42] The Legislature has taken great care to preserve the continuity of the proceedings pending at the time of repeal either before the inquiring officer or Board of Review or Magistrate's Court or any other Court under the provisions of the Agrarian Services Act No. 58 of 1979. The Agrarian Development Act No. 46 of 2000 attaches a saving clause for the purpose of continuing proceedings commenced before the inquiring officer as at

the date of the repeal as the legislature intended to avert certain consequences and brought the saving clause in section 99 (1) into operation.

[43] In terms of the saving clause in section 99 (2), the following categories of proceedings which were pending before the inquiring officer, Board of Review, Magistrate's Court and other Courts were deemed to be proceedings instituted under the corresponding provisions of the Agrarian Development Act and continued and concluded. The three saving clauses relevant to this case are as follows:

"(2) Notwithstanding the repeal of the Agrarian Services Repeal of Act No. 58 of 1979.....

(e) all proceedings pending before an inquiring officer or a Board of Review under the provisions of the Agrarian Services Act, No. 58 of 1979 on the day preceding the date of commencement of this Act, shall be deemed to be proceedings instituted before the corresponding Agrarian Tribunal established by this Act and may be continued and concluded before such Agrarian Tribunal under this Act;

(f) all proceedings pending before a Magistrate's Court under section 21 of the Paddy Lands Act, No. 1 of 1958, or the Agricultural Lands Law, No. 42 of 1973, or the Agrarian Services Act, No. 58 of 1979 on the day preceding the date of commencement of this Act, shall be deemed not to have abated or to have been discontinued or in any way prejudicial affected by reason of the repeal of the said Acts, or Law and accordingly;

(g) all such proceedings shall be continued and concluded under the corresponding provisions of this Act; (8) all proceedings pending in any court under the provisions of the Agricultural Productivity Law No. 2 of 1972, or the Agricultural Lands Law No. 42 of 1973, or under the provisions of the Agrarian Services Act, No. 58 of 1979 on the day preceding to the date of commencement of this Act, shall

be heard and concluded under the corresponding provision of this Act.”

[44] It is apparent from the above mentioned saving clauses, that the said saving measures were temporary in character and since the Agrarian Services Act was replaced by the Agrarian Development Act No. 46 of 2000, a saving provision for the aforesaid categories of cases which were pending at the time of the repeal had to be made. It is crystal clear that the said saving clause as it relates to the above categories of proceedings was designed to meet the exigencies of the said 3 categories of cases that reflect the intention of the legislature that the repeal does not hinder the conduct of proceedings only pending before the inquiring officer, Board of Review, Magistrate’s Court or any other Court.

Effect of saving clause on repeal-section 6 (3) of the Interpretation Ordinance

[45] The next question is what is the effect of such saving provisions has been upon repealed provisions after the repeal of the Agrarian Services Act No. 58 of 1979. Section 6 (3) of the Interpretation Ordinance reads as follows:

- (3) Whenever any written law repeals either in whole or part, a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-
- (a) the past operation of or anything duly done or suffered under the repealed written law;
 - (b) any office committed, any right, liberty, or penalty acquired or incurred under the repealed written law;
 - (c) any action, proceeding, or thing pending or incomPLETED when the repealing written law comes into operation, but every such

action, proceeding or thing may be carried on and complained as if there had been no such repeal.

[46] In this section, “proceedings” may include any suit, appeal, review or revision, application for execution or any other proceeding whatsoever under the Agrarian Development Act. It seems to me that section 6 (3) of the Interpretation Ordinance applies to all the aforesaid 3 categories of pending proceedings before the inquiring officer or the Board of Review or the Magistrate’s Court or in any Court at the time of the repeal. In such situation, section 6 (3) of the Interpretation Ordinance will follow unless a different intention appears in the repealing Act. Thus, section 6 (3) of the Interpretation Ordinance read with section 99 (1) of the Agrarian Development Act No. 46 of 2000 enables those proceedings to be continued and concluded under the corresponding provisions of the Agrarian Development Act, unless a different intention appears in the repealing Act.

[47] In the present case, however, the complaint of eviction was made on 08.05.2007 and thus, no proceeding was pending before the inquiring officer under the provisions of the Agrarian Services Act No. 58 of 1979 when the Agrarian Development Act came into operation on 18.08.2000. Section 6 (3) cannot be applied or invoked in any other proceeding in respect of which a complaint of eviction had been received after 18.08.2000 as any proceeding in such category was not pending before the inquiring officer when the repealing law (Agrarian Development Act) came into operation.

Effect of repeal and delay in establishing Agricultural Tribunals-section 6 (2) of the Interpretation ordinance

[48] Section 6 (2) of the Interpretation Ordinance reads as follows:

“Whenever any written law repeals in whole or part a former written law and substitutes therefore some new provision, such repeal shall not take effect until such substituted provision comes into operation”.

[49] The principle behind Section 6 (2) of the Interpretation Ordinance is that any provision of the repealed Act would not take effect and continue in force until the provisions of the substituted provisions of the repealing Act come into operation as if the Acts had not expired. In the present case, the 7th Respondent had held an inquiry through an inquiring officer on the purported basis that as Agrarain Tribunals were not established when the legislature has clearly authorized the Agrarain Tribunals to exercise such authority.

[50] Now the question is whether an inquiring officer had the authority to hold an inquiry and decide the question whether or not a tenant cultivator had been evicted when the complaint of eviction had been made after the date of the repeal of the Agrarian Services Act No. 58 of 1979 on the basis that the Agrarian Tribunals had not been established under the provisions of the Agrarain Development Act.

[51] Mr. Anil Silva relied on the maxim-*lex non debet deficere conquerentibus in Justitia exhibenda*, meaning, the law ought not to fail in dispensing justice to those with a serious grievance. His argument was that any person should not suffer a wrong without a remedy (*ubi jus ibi remedium*) and if a man has a right and if he is injured in the exercise of such right, he must, have a remedy to vindicate and maintain it.

[52] Mr. Silva contended that although the legislature has not expressed provided for such a situation in the Agrarian Development Act, a person shall be entitled to a remedy when Tribunals are not established and thus, section 6(2) of the Interpretation Ordinance was designed to provide a

remedy for such a situation until Tribunals are established under the repealing Act.

[53] As noted, the effect of the saving clause is only to save pending proceedings before the inquiring officer or Board of Review or in any other Court, commenced as at the date of the repeal. The saving clause, however, does not add or enact anything new and all what the saving clause saves from is extinction by the repeal is the pending proceedings and rights and liabilities accrued under the repealed Act, including the claims for damages, assets and liabilities of Farmer's Organisations established under the Act No. 58 of 1979 etc. (See- section 99 (1) -(a) -(d)).

[54] It is manifest that the proceedings which were commenced before an inquiring officer before the repeal, but were not concluded by such inquiring officer were deemed to be proceedings instituted for the purpose of the corresponding provisions of the Agrarian Development Act No. 46 of 2000.

[55] There is another reason to ascertain the intention of the legislature in limiting proceedings to pending inquiring before the inquiring officer rather than to extend the authority to all proceedings until Tribunals are established. The Agrarian Development Act is also intended to establish Farmers' Organization under the provisions of the said Act and the saving clause in section 99(2)(c) (iii) provides that the Farmers Organisations District Authority established under the Agrarian Services Act shall continue to function until Farmers' Organisation District Authorities are established under the Act No 46 of 2000. No equivalent provision is found in the Act No. 46 of 2000 authorizing inquiring officers to hold inquiries into a complaint of eviction made after the date of the repeal of the Act No. 58 of

1979 until the Tribunals are established, except for those proceedings which were commenced before the repeal of the Act No. 46 of 2000.

[56] As noted, the new Agrarian Development Act No 46 of 2000 does not contain express provision that the administrative authorities can decide whether or not the complainant is a tenant cultivator or whether or not a tenant cultivator has been evicted whereas section 28(1) of the new Act expressly provides that the administrative authorities can decide whether a land is a paddy land or not (judgment of L.T.B. Dehideniya J. in *P.H. Bandula Hewage alias Hewage Bandula Sunil Amarapala v. I. H.H.Dingiri Banda*, CA No. (WRIT) 825/06 decided on 12.08.2015, p. 6). His Lordship referred to two judgments delivered by the Supreme Court in *Herath v. Peter* [1989] 2 Sri LR 325 and *Dolawatte v. Gamage and another* (SC appeal No 45/83 SC minute of 27.09.85 and stated:

"Without without express provision in the Act, the jurisdiction of the administrative authority, which has been already decided by the Supreme Court cannot be enhanced. The preamble of the Act expresses the purpose for which it has been enacted but the Act should provide the mechanism or the procedure to achieve that. Even under the new Agrarian Development Act No 46 of the 2000, the interpretation given in Herath Vs. Peter and Dolawatte Vs. Gamage on jurisdiction of the administrative authority is applicable".

[57] Section 28 (1) of the Agrarian Development Act reads as follows:

"(1) The Commissioner-General may decide whether an extent of land is a paddy land;

(2)The Commissioner-General may for the purpose of making a decision under subsection (1). Call for and obtain the observations and information from the Agrarian Development Council within whose area of authority the extent of land is situate, and from the relevant government departments, statutory

boards and institutions. It shall be the duty of every such government department, statutory board and institution to furnish such observations and information as soon as practicable”.

[58] It is thus clear that section 28 (1) of the Agrarian Development Act specifically empowers the Commissioner to decide any question whether or not a land is a paddy land whereas the same Act does not contain an equivalent provision authorising inquiring officers appointed by the Commissioner-General to hold inquiries and decide the question whether or not, a complainant is a tenant cultivator or whether or not he has been evicted, except for the limited purposes of those proceedings which were commenced under the Agrarian Services Act No. 58 of 1979 prior to the date of the repeal.

[59] As regards the hardship or inconvenience or injustice and a want of a remedy complained of by Mr. Silva due to delays in establishing tribunals, I am of the view that it is not a reason to violate the established statutory provisions intended by the legislature. The only criteria that a Court must examine is to ascertain whether the enactment is likely to achieve the object sought to be achieved (*Javed v. State of Haryana*, AIR 2003 SC 3057). It is well settled law that hardship or inconvenience of a group of persons cannot be the ground of deciding the law as bad (*Commissioner of Agricultural Income Tax v. Keshav Chand*, AIR 1950 (sic), ignore a statutory provision and enforce something that is contrary to the intention of the legislature.

[60] It is also settled principle of law that the Court would lean in favour of upholding the constitutionality of a statute unless it is manifestly discriminatory (*Vijay Singh And Ors. v. State Of Uttar Pradesh And Ors.* decided on 28 July, 2004, by the Allahabad High Court, para 82) or

inconsistent with the object, context and purpose of the legislation envisaged by the legislature.

[61] In *Easland Combines, Coimbatore v. Collector of Central Excise, Coimbatore*, (2003) 3 SCC 410, the Court held:-

"It is well settled law that merely because of law causes hardship, it cannot be interpreted in a manner so as to defeat its object.....It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning of intendment of the Legislature and in doing so, they should presume that the provision was designed to effectuate a particular object or to meet a particular requirement."

[62] It is evident that hardship to an individual cannot be a ground for not giving effect to statutory provisions where the legislature has solely conferred on the Agrarian Tribunals to perform the duty of deciding whether or not a tenant cultivator has been evicted, except to those proceedings which were instituted and commenced before the repeal was made before 18.08.2000.

[63] The Parliament has chosen and deliberately conferred jurisdiction on the Agrarian Tribunals to decide the question whether or not a tenant cultivator has been evicted under section 7 (3) of the Act No. 46 of 2000, except for the purposes of those pending proceedings which were commenced while the repealed Act was an existing law.

[64] The decision whether a complainant is a tenant cultivator or not and whether or not a tenant cultivator has been evicted is fundamentally of jurisdictional importance and the issue is in fact, who performs the duty. Thus, any decision taken by an inquiring officer without authority in respect of a complaint of eviction instituted after the date of the repeal, except for the purposes of those proceedings which were commenced

while the earlier act was an existing law, is a mere nullity and without life or vigor.

[65] There was a further point which goes to indicate that section 6 (2) could not be applied or alternatively, demonstrates a contrary intention. There is a three-stage process for the resolution of the dispute regarding complaints of eviction made under the Act No. 46 of 2000 as amended by the Agrarian Development (Amendment) Act No. 46 of 2011. The first stage is to refer a complaint by the Commissioner to the Tribunal directing it to hold an inquiry by the Tribunal that consists of either a retired judge with 7 years' experience or a retired public officer with 7 years' experience at executive level in the field of agrarian services. When an appeal is made to the Board of Review, it shall be heard by Members, who shall all be appointed by the Judicial Service Commission. The final stage is the appeal to the High Court Court. The process under the Act No. 58 of 1979 was a two-stage process. The first was to refer the complaint to an inquiring officer who is an agrarian services officer. The second stage is an appeal to the Board of Review consisting of Members who were appointed by the Commissioner.

[66] I hold that where there is a direct conflict between the two pieces of legislation dealing with a fundamental jurisdictional question of who performs the duty of deciding the question of eviction except for the purposes of those actions which were commenced while the repealed Act was an existing law.

[67] The legislature has laid down an exhaustive procedure in respect of the form of application, appointment of members of Tribunal and Board of Review, inquiry procedure, both at the inquiry and appeal. Both legislations, cannot stand together on the question of jurisdiction, namely,

who performs the duty under section 7 (3) and they cannot operate simultaneously, except for the limited purposes of those pending proceedings which were commenced while the repealed law was an existing law.

[68] The complaint of eviction in the present case has been made to the 7th Respondent on 08.05.2007 and thus, an inquiring officer appointed by the Commissioner had no authority to hold an inquiry and his only function was to refer such complaint to the Tribunal for the purpose of holding an inquiry, except for the purposes of those proceedings pending before the inquiring officer at the date of the repeal.

[69] The principle behind section 6 (2) will take effect as long as the effect of it is not inconsistent with the intent of the legislation reflected in the provisions of the Agrarian Development Act with regard to the fundamental jurisdictional matters. Section 6 (2) of the Interpretation Ordinance cannot be applied or be invoked where there is a direct conflict with the repealing and repealed Act on a fundamental matter of jurisdiction, namely the question who performs the duty of holding the inquiry into a complaint of eviction under section 7(3) of the Agrarian Development Act No. 46 of 2000 as amended.

[70] The true effect of section 6 (2) cannot be effected or is not workable due to a jurisdictional incompatibility and application of exhaustive rules with regard to the qualifications and appointment of Members to Tribunals and the Board of Review and the procedure for the conduct of inquiries and appeals. The invocation of section 6 (2) of the Interpretation Ordinance under such circumstances would defeat the obvious intention of the legislature and produce a wholly unreasonable result and reduce the new legislation to futility.

[71] The 7th Respondent has held an inquiry through an inquiring officer on the question whether or not a tenant cultivator has been evicted and decided the matter without authority in violation of the provisions of the Agrarian Development Act No. 46 of 2000 as amended and thus, the determination dated 07.09.2007 of the 7th Respondent marked "P8" is bad in law and has to be quashed by a writ of *certiorari* as correctly decided by the learned High Court Judge.

Error on the face of the determination made by the 7th Respondent (P8)

[72] As noted, the complaint of eviction had been dismissed by the 7th Respondent, not on the ground of want of jurisdiction, but purely on the ground that in terms of the Final Decree of the partition action in D.C. Hambantota case bearing No. P/2200, the Appellant has become the absolute owner of the paddy land in question and thus, the tenant cultivators had no rights whatsoever, to the paddy land in question.

[73] It is not in dispute that Sayindara and Nikulas were the tenant cultivators of the said land called "Kahabitiyahena" as clearly admitted by the Appellant in his Plaintiff dated 21.11.1997 filed in the District Court of Hambantota. The Appellant while giving evidence in the partition trial on 20.05.2003 has clearly admitted that (i) the tenant cultivators of the said paddy land were Niculas and Sayindara; (ii) the said Nikulas passed away and his son is cultivating the paddy land upon his father's demise; (iii) Sayindara who is the other tenant cultivator is also cultivating the said paddy land. She had sought a partition without affecting the rights of the said two tenant cultivators (Vide- evidence at page 230 of the brief).

[74] In terms of the Final Decree of the partition action, the Appellant and the 1st Defendant were entitled to undivided rights of the said land and thereafter, the possession of lot 1 of the Final Partition Plan was delivered

to the Appellant by the Fiscal on 26.10.2006 (V1). However, the rights of the tenant cultivators are not affected by the Final Decree of the partition action as the rights of tenant cultivators are reserved by 7(2) of the Agrarian Development Act No. 46 of 2000 and conserved by the Final Partition Decree. Section 7 (3) of the Agrarian Development Act No. 46 of 2000 reads as follows:

(2) Notwithstanding anything in any other written law, the tenant cultivator of any extent of paddy land which is purchased by any person under the Partition Law, No. 21 of 1977, or which is allotted to a co-owner under a decree for partition shall be deemed to be the tenant cultivator of that extent of paddy land oPsu& purchaser or such co-owner, as the case may be, and the provisions of this Act, shall apply accordingly.

[75] In *H.L. Odiris v H.L. Anddrayas* 72 NLR 110, it was held that the interest of a “tenant-cultivator” under the Paddy Lands Act, is an “encumbrance” within the meaning of Section 48 of the Partition Act and, therefore, may properly be specified and conserved in a partition decree entered in terms of that section. Accordingly, the judgment was varied, in allotting shares subject to the rights of the defendant as tenant-cultivator.

[76] As noted, there is no dispute that Nikulas and Sayindara were the tenant cultivators of the paddy land in question and thus, the Appellant had admitted the relationship between the landlord and tenant cultivator. The paddy land dispute in question falls within the scope of the Agrarian Development Act No. 46 of 2000 and thus, any dispute between the tenant and landlord cannot be brought to be determined by a District Court.

[77] In *Dolawatte v. Gamage and another* (SC appeal No 45/83 SC minute of 27.09.85 (which is attached as an annexure to *Herath v. Peter* [1989] 2 Sri L R 325) at pages 329 and 330, the Supreme Court held:

"The judgment of the Court of Appeal, finding in favour of the 1st Defendant Respondent, has been based mainly upon the judgment of the Supreme Court in the case of Hendrick Appuhamy vs. John Appuhamy (supra), where Sansoni, CJ. concluded, after a consideration of the provisions of the now-repealed Paddy Lands Act No.1 of 1958, which was the earliest enactment in the sphere of agricultural lands legislation, and the precursor to the aforementioned Agrarian Services Act No. 58 of 1979 now in force, that, as the said Paddy Lands Act creates new rights and obligations and also provides the sole machinery to which a landlord must resort if he wants to have his tenant-cultivator evicted or his paddy field property, cultivated, no other remedy was available to the landlord since the said Act was passed, and that the said Act takes away the jurisdiction of the Courts by necessary implication. No submissions have been addressed to this Court against the correctness of the view so expressed in the said judgment. The view so expressed in that judgment in respect of the said Paddy Lands Act would hold good even in regard to the Act now in force, the Agrarian Services Act No. 58 of 1979 referred to earlier. Any dispute in respect of a paddy-field arising between a landlord and a tenant, as defined by the provisions of the said Act, and in relation to which express provision is made therein will be regulated by the provisions so contained in the said Act; and any such dispute would have to be determined in the manner set out in the said Act. Such dispute cannot be brought before and sought to be determined by a court of law".

[78] His Lordship Ranasinghe J., (as he was then) referring to the judgment of Sansoni CJ. in *Hendrick Appuhamy v. John Appuhamy* (69 NLR 32) stated at 331:

"In that case the plaintiff clearly admitted that he was the landlord of the said paddy field and that the defendant, whom he was bringing before the District Court, was his tenant-cultivator in respect of the said paddy-field. The plaint was clearly and categorically presented on the basis that he was the landlord and the defendant the tenant-cultivator, within the meaning of the said Paddy Lands Act, in

respect of the paddy-land which was the subject-matter of the action and to which the provisions of the said Act applied. There was no dispute raised or challenge made in respect of the relationship between the plaintiff and the defendant. The relationship of the landlord and tenant-cultivator, which was the prerequisite to the application of the provisions of the Paddy Lands Act, was accepted and admitted as existing between the plaintiff and the defendant.

The Plaintiff-Appellant in this case has, however, come before the District Court alleging that the 1st Defendant-Respondent is a trespasser; and although he, the Plaintiff-Appellant, avers that he is the landlord of the paddy-field, which is the subject-matter of the action, he does not accept the 1st Defendant-Appellant as the tenant-cultivator of the said paddy-field. In fact he expressly denies that the 1st Defendant-Appellant is the tenant-cultivator. He avers that, although the 1st Defendant-Appellant has had himself registered as a tenant-cultivator, such registration has been obtained fraudulently. There is thus no acceptance by the Plaintiff-Appellant of one of the essential basic facts and circumstances, the clear and undisputed existence and acceptance of all of which alone would bring into operation the statutory provisions of the relevant agricultural-lands law, the Agrarian Services Act No. 59 of 1979".

[79] It is absolutely clear that in the present case, the District Court had no power to determine any dispute between the tenant cultivator and the landlord and thus, the Final Decree of the District Court case No. P/2200 never ousted the rights of the tenant cultivators. The 7th Respondent has clearly misinterpreted the Final Decree of the partition action and failed to consider that despite any Final Partition decree, the rights of the tenant cultivators are reserved and conserved by section 7(2) of the Agrarian Development Act and their rights are not affected by the Final Partition Decree.

[80] I hold that the rights of the tenant cultivators of the land called "Kahabiliyahena" are not extinguished or affected by the Final Partition

Decree and the shares allotted to the Appellant are preserved subject to the rights of tenant cultivators. Accordingly, the mere delivery of possession to the Appellant by the Fiscal will not extinguish the rights of the tenant cultivators of the said paddy land.

[81] The 7th Respondent was in error in holding that upon the entering of the Final Decree in D.C. Hambantota Case No. P/2200, all rights of tenant cultivators were extinguished and the Appellant who was allotted lot 1 of the Final Partition Plan in extent of 11 acres and 23.8 perches became the absolute owner and the owner cultivator of the said paddy land.

[82] For those reasons, I hold that the determination of the 7th Respondent dated 07.08.2007 which contains in "P8" is erroneous and bad in law and has to be quashed as correctly decided by the learned High Court Judge.

Conclusion

[83] For those reasons, I see no reason to interfere with the judgment of the learned High Court Judge of Hambantota dated 25.05.2009. The Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Shiran Gooneratne J.

I agree.

JUDGE OF THE COURT OF APPEAL