IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SC/APPEAL/NO.151/2019

SC/SPL/LA 34/2016

CA (PHC) 243/2004

HCA 27/2002

B. Jayarathne,

Jaya Sewana,

Alokapura,

Hambanthota.

PETITIONER

Vs.

1. Assistant Commissioner of Agrarian Services, Hambanthota.

2. A.A. Dayasena,
27, Kaduru Pokuna Road,
Tangalle

RESPONDENTS

And

B. Jayarathne,

Jaya Sewana,

Alokapura,

Hambanthota.

PETITIONER-APPELLANT

Vs.

1. Assistant Commissioner of Agrarian Services, Hambanthota.

2. A.A. Dayasena,
27, Kaduru Pokuna Road,
Tangalle

RESPONDENT-RESPONDENTS

And now Between

B. Jayarathne,

Jaya Sewana,

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Hambanthota.

PETITIONER-APPELLANT-APPELLANT

Vs.

1. Assistant Commissioner of Agrarian Services, Hambanthota.

2. A.A. Dayasena,27, Kaduru Pokuna Road, Tangalle

RESPONDENT-RESPONDENT-RESPONDENTS

Before: Jayantha Jayasuriya, PC, CJ,

E.A.G.R. Amarasekara, J,

Kumudini Wickremasinghe, J.

Counsels: Saliya Peiris, PC for the Petitioner-Appellant-Appellant.

Sureka Ahmed, SC for the 1st Respondent-Respondent-Respondent.

Mr. Shane Foster instructed by Niranjan de Silva for the 2nd Respondent-Respondent-Respondent.

Argued on: 03.03.2022

Decided on: 27.11.2024

E.A.G.R. Amarasekara J.

This is an appeal against the judgment dated 19.01.2016 of the Court of Appeal made in the appeal bearing No.CA (PHC) 243/2004 which affirmed the judgment dated 10.06.2004 of the Provincial High Court of Hambantota in the case bearing No. HCA 27/2002. The Petition dated

29.02.2016 filed by B. Jayarathne, the Petitioner-Appellant-Appellant (hereinafter referred to as the Appellant) has mainly focused on getting those two judgments set aside and obtaining relief as prayed in the petition filed in HCA 27/2002 before the Provincial High Court of Hambantota by him. To grapple the matters involved in the present appeal, it is necessary to refer to the outcomes of some other applications that preceded those two applications, namely Agrarian Inquiry No. 42/3/93, Appeal No. C.A.470/82 filed against the decision in said inquiry No.42/3/93 and Hambantota High Court Application No.HC.85/2000.

Agrarian Inquiry No. 42/3/93 and the Appeal No.C.A.470/82

A person called S. A. Dharmasena made a complaint to the Commissioner of Agrarian Services of Hambanthota purportedly under the provisions of section 5(3) of the Agrarian Services Act No. 58 of 1979 on the basis that he is the Tenant Cultivator of the paddy land called "Wewe Kandiya Gawa Kumbura". His complaint was that he had been evicted from the said paddy land "Wewe Kandiya Gawa Kumbura" which belonged to one Nandawathi Dissanayake and, the Appellant was named as the occupant of the said paddy land. The complaint, S. A Dharmasena had sought that an inquiry be held to determine whether or not he had been removed from the said paddy land. The Assistant Commissioner of Agrarian Services is the 1st Respondent-Respondent in this Appeal. The individual who held the said post and represented in the other application may be a different person, but as it is the same post involved in those applications, the Assistant Commissioner of Agrarian Services of Hambanthota will be sometimes referred to as the 1st Respondent hereinafter in this judgment.

As per the Petition, an inquiry was held before the Assistant Commissioner of Agrarian Services of Hambantota (the 1st Respondent), in which the complainant one S. A. Dharmasena, A.A. Dayasena, the 2nd Respondent-Respondent-Respondent, (hereinafter sometimes referred to as the 2nd Respondent) who is the husband of the deceased Nandawathi Dissanayake, the landlord, and B. Jayaratne, the Petitioner- Appellant-Appellant (hereinafter sometimes referred to as the Appellant) participated. (The Appellant was named as the Occupier in the said inquiry and 2nd Respondent was the Respondent in that inquiry.)

At the conclusion of the said Inquiry No.42/3/93, the 1st Respondent, by his order dated 01-07-1982, refused the application of said S.A. Dharmasena and issued a further direction to evict the Appellant from the subject matter- vide the decision found at pages 130 to 133 of the brief. It was also directed to hand over the possession to the 2nd Respondent after the eviction of the occupier, namely the Appellant.

As per the said decision, the reason to refuse the application of S. A. Dharmasena was that it was not proved that said Dharmasena was removed from the said paddy land on 03.05.81 as alleged. However, it is clear that in the said decision, the 1st Respondent came to the following findings;

- That said S. A. Dharmasena was the Tenant Cultivator from 1977 to the alleged date of removal,
- That said Tennent Cultivator was not removed from the said paddy land with the sanction of the 2nd Respondent on 03.05.1981 by the Appellant, the Occupier.
- That any transfer of rights of the Tenant Cultivator by deed No. 1358 dated 30.04.1977 is not valid and any occupier came to possession in view of such transfer has to be

evicted from the paddy land in question. (It appears that allegedly the said S.A. Dharmasena had transferred his rights as Tenant Cultivator to aforesaid Nandawathie Dissanayake, wife of the 2nd Respondent, through that deed)

- That when such transfer was invalid, the 2nd Respondent had no authority to give the tenancy rights to the Appellant who was named as the occupier in the said application.

Thus, by directing to evict the occupier, namely the Appellant, 1st Respondent had indirectly come to the conclusion that the Appellant was in occupation of the paddy land which means that the tenant cultivator, S.A. Dharmasena has lost his possession of the paddy land on someday, but not on the alleged date of eviction in the manner alleged in the relevant application. Aforesaid findings also indicate that the complainant, S.A. Dharmasena was the Tenant Cultivator and transfer of his rights through a deed was not valid. His application failed as he failed to prove that he was removed from the land with the sanction of the 2nd Respondent on 03.05.1981 as alleged.

The aforesaid S. A. Dharmasena, being aggrieved by the said decision dated 01-07-1982 preferred an appeal to the Court of Appeal. As per the decision in the said Appeal No. C.A. No. 470/82, aforesaid Appeal was dismissed on 10.11.1992.- vide the Judgment found at pages 155 to 158 of the brief. The reason for dismissal also indicates that it was the opinion of the Court of Appeal that said Dharmasena failed to establish that he was evicted as alleged. The said decision had not made any amendment to the original decision of inquiry No. 42/3/93. As such, said decision remain intact between the parties to said application, namely the Appellant, S. A. Dharmasena and the 2nd Respondent.

It is pertinent to note that the Appellant despite being aware of the decision of the Assistant Agrarian Commissioner, the 1st Respondent, directing that he be evicted from the paddy land, failed to appeal against the same. Furthermore, despite an appeal being filed by said S. A. Dharmasena, the complainant before the Commissioner, and the Appellant being named as a Respondent before the Court of Appeal, the Appellant still failed to challenge the decision successfully as a party to the Appeal. One may argue that the Appellant cannot appeal against the said decision in terms of section 5(3) of the Agrarian Services Act but he being an aggrieved party had not sought any revisionary remedy or writ against such decision and still such decision is valid against him. It must also be noted that decision in aforesaid application No.42/3/93 was made on 01.07.1982. As per section 5(6) of the Agrarian Services Act of 1979 which prevailed at that time, where no appeal was made from a decision of the Commissioner within the time allowed such decision shall be final and conclusive and shall not be called in question in any Court or tribunal. (This section later had been amended by Act No. 4 of 1991, to make provision to submit the appeal to Agrarian Board of Review instead of Court of Appeal. However, the final and conclusive effect remain the same when there was no appeal. It is also observed that Agrarian Services Act was later repealed by the Agrarian Development Act, No. 46 of 2000 which also in section 7(3) to (6) made provisions for inquiries and appeals as well as finality effect for decisions when there is no appeal. However, notwithstanding the said repeal of Agrarian Services Act, section 99(2) of the Agrarian Development Act provides for transitional situations. However, the decision in application no.42/3/93 dated 01.07.1982 as well as the Judgment in C.A. 470/82 on the appeal made by S.A Dharmasena took place during the time Agrarian Services Act was in force.).

The circumstances described above indicate that the Appellant did not make an appeal against the decision made in application no.42/3/93 and he was a party Respondent to the appeal made by S.A. Dharmasena and he did not challenge the said decision even during the said appeal. He neither sought revisionary remedy and/ or writ against such decision and the decision is still valid. After said decision was confirmed by the appeal made, the decision which contains provisions directing to evict him from the paddy land, has to be considered as final and conclusive. On the other hand, the conduct of the Appellant with regard to the decision in application No.42/3/93 establishes that he has acquiesced with the decision of the 1st Respondent, the Assistant Agrarian Commissioner, although he now seeks to challenge the enforcement of the same through different action as explained later in this judgment without any application to vacate or quash the relevant part, namely the decision to evict him, in the said decision. In fact, as the 1st Respondent found that the transfer of tenancy rights of the tenant cultivator through the said deed is invalid. He had power in terms of the Agrarian Services Act to evict the Occupier, the Appellant- vide section 11, especially section 11(3) of the Agrarian Services Act. Sections 6 and 4(5) of the said Act were relevant in such situations.

The Appellant, in his petition claims that, a few days following the issuance of the aforementioned decision dated 01.07.1982, the 2nd Respondent applied to the 1st Respondent to appoint the Appellant as the tenant cultivator of the abovementioned paddy land- vide letter dated 11.08.1982 found at page 168 of the brief. The Appellant further claims in his Petition that the investigation into the abovementioned application was not proceeded on the ground that an appeal had been filed against the aforesaid decision dated 01.07.1982, and that it was postponed indefinitely, as evinced by the document marked P2(e). (Vide paragraphs 6,7 and 8 of the Petition dated 22.02.2016. Also see document filed at page 165 of the brief). However, it appears that the 2nd Respondent denied the said letter dated 11.08.1982.

As said before, the said decision dated 01.07.1982 clearly indicated that transfer of tenancy rights by S. A. Dharmasena through the said deed No.1358 is not valid. Further, there is a clear indication in that decision that S.A. Dharmasena was the tenant cultivator on or around the time of the alleged removal referred to in the application relevant to the said decision and, said decision provided a clear direction to evict the Appellant from the said paddy land. Whatever the positions taken by the 2nd Respondent (landlord) or his predecessor Nandawathie before the said decision, including during the relevant inquiry, accepting the Appellant as tenant cultivator has no relevance as such positions has been clearly defeated by the said decision which was not changed in appeal made against it, nor yet vacated or quashed through any revision or writ application. Thus, during the pendency of appeal against the said decision, appointing the Appellant as the tenant cultivator as alleged by the Appellant, would have been in direct conflict with the said decision as he cannot be appointed as the tenant cultivator before evicting him from or terminating his unlawful occupancy. On the other hand, when read with sections 11(2), (3), 6 and 4(5) of the said Agrarian Services Act, he cannot be appointed as the tenant cultivator without the approval of the Commissioner of Agrarian Services. However, not proceeding with the alleged application of the 2nd Respondent to appoint the Appellant as aforesaid, appears to be a prudent decision as the decision in appeal was pending over the decision dated 01.07.1982. On the other hand, when the 2nd Respondent refute the alleged letter dated 11.08.1982, I do not think any authority can direct to commence or proceed with such an inquiry based on that letter, as the purported author denies the said letter.

However, the Appellant claims that since the 2nd Respondent rightfully accepted the Appellant as the tenant cultivator and no action was taken against him for more than 15 years, the Appellant continued to cultivate the said paddy land as the tenant cultivator. It must be noted that no action could be taken to evict him during the pendency of said appeal against the said decision in inquiry 42/3/93. The 2nd Respondent disputes that he accepted the Appellant as the tenant cultivator after the said decision and as said before, challenges the said letter dated 11.08.1982 tendered in that regard. The Appellant has tendered some more documents with his counter objections in HCA 27/2002 which will be referred to later in this judgment to show that the 2nd Respondent has accepted him as the tenant cultivator without giving the 2nd Respondent a chance to reply regarding those new documents as he had filed his objections by that time. However, I do not see that the 2nd Respondent can validly accept the Appellant as tenant cultivator against the said decision which was not changed in appeal, which decided to evict the Appellant from the paddy land as an unlawful occupier, without terminating his unlawful occupancy first as decided in the said inquiry or without getting the commissioner's approval as aforesaid. It must also be noted that said decision in the inquiry No.42/3/93 had not clearly indicated that S.A. Dharmasena is no longer the tenant cultivator. The failure of said Dharmasena's application is due to the fact that he was unable to prove the eviction as alleged.

Application No. HC 85/2000

The Appellant alleges that the 2nd Respondent had made an application to the High Court of Hambantota bearing the above number to get the said decision dated 01.07.82 in inquiry No.42/3/93 which was confirmed in CA 470/82 implemented in collusion with the 1st Respondent after the expiry of 20 years and had come to a settlement to implement the said decision to evict the Appellant. The Appellant alleges that on the strength of the said settlement (found at pages 175 to 176 of the brief) entered in the said application HC 85/2000, the 1st Respondent issued the letter marked 'Pe1'(found at page 70 of the brief) directing him to vacate the subject matter after 21 years of the said order dated 01.07.82. In the submissions made on behalf of the Appellant, it is also alleged that he was not made a party to the said application and therefore settlement order made in that application was made in breach of the rule *áudi alteram partem'*. However, it has to be said that a copy of the application in HC 85/2000 is not among the documents found in the brief indicating that the Appellant has not filed a copy of the said application along with his writ application in HC 27/2002 which application will be referred to later in this judgment. Thus, this Court does not have the ability to perceive the nature of the application in HC 85/2000 made to the High Court by perusing the application itself. However, the submissions made by the 2nd Respondent in this regard indicate that through the settlement, the 1st Respondent agreed to carry out his public duty which in turn indicates that the application made to the High Court HC 85/2000 would have been a writ application praying for orders in the nature of Mandamus. The documents found in the brief along with the said settlement in HC 85/2000 as part of said case record at pages 175 to 183, indicate that there had been request letters written to the 1st Respondent in 1997 by the 2nd Respondent to enforce the decision in inquiry No.42/3/93 which was confirmed after the decision of Court of Appeal application No. CA 470/82. Said Court of Appeal decision was delivered in 1992 and the Appellant had full opportunity to place his case before the inquiry as well as before the Court of Appeal. Thus, the Appellant's position that he was not heard in

breach of the rule *Audi Alteram Partem* and the issuance of 'Pe1' to evict him from the possession after 21 years from the original decision cannot hold water. The decision in the said inquiry was pending in appeal till 1992 and thereafter the 2nd Respondent appears to have requested the relevant authorities to enforce the decision which includes the eviction of the Appellant and handing over of the possession to the 2nd Respondent as per the said decision. Possibly, the 2nd Respondent has made an application to the relevant High Court to get the 1st Respondent to carry out the public duty entrusted to the 1st Respondent. As such, I do not see that the Appellant should have been a party to HC 85/2000 as his rights were decided in the aforesaid inquiry which was not disturbed by the appeal made. As said before, neither revision nor writ application has been made against it. As mentioned above, it is my view, till that decision is enforced and he being evicted from the paddy land as per the said decision or he himself terminate his unlawful occupancy, he cannot be lawfully appointed as the tenant cultivator of the paddy land since, firstly, said decision has not clearly indicated that S. A. Dharmasena is no longer the tenant cultivator, and secondly, it is not clearly shown that the Commissioner's approval has been taken for that as explained above.

An application made to get the decision enforced after it was confirmed by the Court of Appeal and the 1st Respondent agreeing in a settlement before a Court to do his public duty relating to such decision, cannot be considered as an act of collusion.

Anyhow, non-availability of the application made by the 2nd Respondent to the High Court in application No. HC. 85/2000 deprives this Court to observe the date and nature of that application. The date is important as the Agrarian Services Act was repealed on 18.08.2000 by the Agrarian Development Act No.46 of 2000. HC No. 85/2000 indicates that it was possibly filed in 2000. However, the settlement took place on 10.01.2002. Thus, it is not clear whether the said application was filed when the Agrarian Services Act was in force or after it was repealed through the Agrarian Development Act which became the relevant law. Without providing this important information to Court, one should not be allowed to argue a case on how the transitional situation works on the rights of the parties. If this application was filed in HCA 27/2002 writ application filed by the Appellant, which application will be referred to later in this judgment, it should have been available in the brief. The Petition filed by the Appellant in that matter only indicates that he had filed only some proceedings and documents relevant to the aforesaid settlement – vide pages 60, 175 to 183 of the brief.

However, as indicated above, the 1st Respondent in view of the settlement reached in the said High Court application No. HC 85/2000 issued 'Pe1' in accordance with the decision in inquiry No.42/3/93 to the Appellant directing him to vacate the paddy land.

Application No. HCA 27/2002 and Appeal No. CA (PHC) 243/ 2004

The Appellant preferred the Writ Application bearing No. HCA 27/2002 to the Provincial High Court of Hambantota seeking a mandate in the nature of Writ of Certiorari to quash the said direction marked 'Pe1' and also a Writ of Mandamus directing the 1st Respondent to proceed with the inquiry which has been laid by as indicated in the aforementioned 'P2e'- vide petition dated 11.03.2002 found at page 57 of the brief.

It is worth to mention this Court's observations as to the averments made by the Appellant in the said petition dated 11.03.2002 as follows;

- It has been filed to quash the aforesaid order marked 'Pe1'which was sent to the appellant after the aforesaid settlement in HC 85/2000.
- It is stated in the said petition that said 'Pe1' is based on the aforesaid decision in inquiry No. 42/3/93 where it was decided that the said S.A Dharmasena, the complainant had not been evicted, and when said Dharmasena appealed against it, the appeal was dismissed. However, as explained above this position had not placed the correct picture, as explained above what had been decided was that the eviction had not taken place as alleged on or around 03.05.1981 in the application to the said inquiry and eviction of the occupier, the Appellant indirectly indicates that the inquiring officer came to the conclusion that the tenant cultivator, S.A. Dharmasena has lost the possession of the paddy land on someday.
- The Appellant, in the said petition filed in HCA 27/2002, have further stated that the said inquiry was held in terms of section 5(3) of the Agrarian Services Act and if the decision is that no eviction has taken place, Commissioner has no power to proceed to evict an occupier and only if it was decided that there was an eviction that the said Commissioner has power to evict the occupier. The Appellant has also taken up the position that an appeal is available only for the complainant when it is decided that there is no eviction and for the landlord when it is decided that there is eviction; thus, the Appellant was not the aggrieved party in that inquiry. In this regard, it is observed that it is not correct to say that Appellant was not an aggrieved party as there was direction to evict him from the paddy land. With regard to the stance that the decision was that there was no eviction, I have commented above. On the other hand, as stated above, the Appellant had not appealed against the said decision. Even if it is taken as correct that the Appellant has no right of appeal against said decision in terms of section 5(6) of the Agrarian Services Act as stated by the Appellant, being a party aggrieved he could have sought revisionary remedies against such decision, which he failed to seek. Anyhow, the direction to evict the Appellant is based on aforesaid section 11(3) of the said Act. During the inquiry, the 1st Respondent found that transfer of tenancy rights through a deed was invalid and therefore the unlawful occupier who came to possession as a result of such transfer should be evicted. The relevant provisions for such direction, as mentioned above, are sections 11(2) and (3) of the said Act which should be read along with sections 6 and 4(5). The eviction of the Appellant in terms of those sections were not affected by any manner due to the decision in appeal. If such decision to evict the Appellant was irregular, illogical or illegal or ultra vires, the Appellant even could have invoked writ jurisdiction to quash such decision. No such step was taken and the said decision to evict the Appellant is still a valid decision which has been confirmed in appeal.
- In the said Petition in HCA 27/2002, the petitioner, as mentioned before, has also averred that not making him a party to application in HCA 85/2000 violates the rule of *Audi Alteram partem.* I have already commented over this above. As said before, the Appellant has not tendered a copy of the said application along with the said petition for Court to comprehend the nature of the application. As such, without revealing an important document in a writ application, the Appellant should not be allowed to support his case on that ground. On the other hand, as explained above, if it was an application to enforce the public duty entrusted to the 1st Respondent to enforce the decision made in 42/3/93, the Appellant had the ample opportunity to present his case

during the inquiry as well as during the appeal. Further, the Appellant's alleged tenancy rights as tenant cultivator was not accepted in the said inquiry and in appeal. As said before, that decision was not challenged by the Appellant in any other manner. Even there is no prayer to that effect in the petition filed in the application in HCA 27/2002. Thus, he is an unlawful occupier who has to be evicted according to a valid decision in force. Hence, as alleged in the said petition there cannot be a valid creation of tenant cultivator and landlord relationship between him and the 2nd Respondent after the said decision, without the approval of the Commissioner as explained above.

- Furthermore, the Appellant had stated in his petition in HCA 27/2002 that through the letter marked P3, the 2nd Respondent requested 1st Respondent to appoint the appellant as the tenant cultivator and the inquiry based on that request has been postponed indefinitely as explained above. One of the prayers was to issue a writ of mandamus to commence that inquiry. However, the 2nd Respondent has denied the fact that he has so requested the 1st Respondent. If the facts are disputed, a writ could not have been considered based on that issue. On the other hand, if the purported author of P3 denies it, a court cannot make a direction to commence an inquiry on that request.
- It is the position taken in the said petition in HCA 27/2002 that since the decision in the inquiry No. 42/3/93 was that no eviction of the tenant cultivator had taken place and it was confirmed in the appeal, an order in terms of section 7(7)(b)11 of the Agrarian Development Act could not have been made to evict him from the paddy land. As said before, finding was that it was not proved that S. A. Dharmasena, the tenant cultivator was evicted as alleged by him and however, that the paddy land has come into the hands of an unlawful occupier, namely the Appellant. Appellant had not challenged the said decision to evict him from the paddy land during the Appeal or if he has no right to appeal as averred, through any other means. On the other hand, as mentioned before, eviction of the Appellant had been decided in terms of sections 11(2) and (3) of the Agrarian Services Act which should be read along with sections 6 and 4(5) of the said Act which was within the power of the 1st Respondent who inquired into the matter. It is true that when 'Pe1" was issued after the aforesaid settlement in HC 85/2000, the Act in force was the Agrarian Development Act. Most probably, the said Application in HC 85/2000 would have been filed to enforce the public duty entrusted to the 1st Respondent in terms of the said Agrarian Services Act, and therefore it would have been proceeded after the repeal of the said Act and issued the said 'Pe1' in terms of the provisions of the Agrarian Development Act. Section 99(2) (g) of the Agrarian Development Act provides for such situation and thus, the proceedings with said application HC85/2000 and reaching a settlement and issuance of 'Pe1' appears to be lawful. However, as explained above, the application in HC 85/2000 had not been annexed to the said application in HCA 27/2002 and, therefore it cannot be observed whether it was an application filed after the enactment of Agrarian development Act. If that application was filed after the enactment of Agrarian development Act, I see the possibility of forming an argument that the said Act has no provision to enforce decisions or orders made by the previous Act since the orders referred to in section 99(2)(h) seems to be the orders made in terms of section 95 of the said Act and Section (20) (e) (f) and (g) seem to be relevant to the pending actions which are not concluded. However, on that assumption the said writ application could not have decided in favour of the Appellant since the most important document in that regard, namely the

application made in HC 85/2000 had not been tendered along with the petition to establish the date of filing that application.

- It is also observed that the Appellant had tendered more documents with his counter objections in HCA 27/2002 to show that the 2nd Respondent accepted him as the Tenant Cultivator but as said before, while being decided as an unlawful occupier who should be evicted and also without the approval of the Agrarian Commissioner, he cannot be validly appointed as the tenant cultivator.

Writ is a discretionary remedy. What have been commented above clearly indicates that by filing the said writ application, the Appellant had tried to stop the enforcement of a valid decision to evict him from the paddy land relevant to above application without taking any step to challenge, set aside or quash the said decision to evict him which was confirmed after an appeal made by the said S.A. Dharmasena. Further, no collusion can be seen as the said settlement between the 1st Respondent and 2nd Respondent was with regard to an apparent public duty that has to be done by the 1st Respondent following the decision in 42/3/93 which was confirmed by the Court of Appeal. Further, the Appellant had not tendered the copy of the application in HC 85/2000 which was a necessary document with regard to certain contentions of the Appellant. It is not reasonable to mandate to commence an inquiry based on P3 when the purported author of the document denies it. As such, no sufficient material was before the Provincial High Court of Hambantota to decide the said writ application in favour of the Appellant. Thus, it was an application that should have been rejected.

The learned Judge of the Provincial High Court of Hambantota delivered the judgment dated 10.06.2004, dismissing the Appellant's said writ application No. HCA 27/2002- vide pages 50-56 in the brief.

Among others, following are the reasons indicated by the learned High Court Judge for the said dismissal of the Appellant's application;

- The Appellant was a party to the inquiry No. 42/3/93 and in the decision of the said inquiry, Assistant Agrarian Commissioner had also come to the conclusion that the Appellant should be evicted from the paddy land.
- The Appellant has not made an appeal against the said order.
- When S. A. Dharmasena made an appeal against the said order, the Appellant has been made a party to that appeal but the appellant has not challenged his eviction in that appeal and further has not argued to indicate that the eviction of the appellant is not valid which was the argument made in the said application No. HCA 27/2002.
- Thus, the decision in the said inquiry which was not changed by the said appeal made by S. A. Dharmasena has to be considered as a final decision.
- Even though the Appellant had tendered a letter by which the 2nd Respondent has allegedly accepted the Appellant as the tenant cultivator, the second Respondent has not followed the necessary procedures in that regard.
- However, the order marked 'Pe1' has been issued after considering all the circumstances.
- Even though the relevant law has been changed, in terms of the sections 99(2) (g) and 7(7)(a) of Agrarian Development Act, No.46 of 2000, since the order in inquiry No. 42/3/93 is affirmed in appeal, the eviction order issued by the 1st Respondent is legally valid.

- When considering all the circumstances relating to the action, there is no acceptable grounds to direct the 1st Respondent to hold an inquiry on the alleged letter sent by the 2nd Respondent to the 1st Respondent to accept him as the tenant cultivator.

Being dissatisfied with the abovementioned judgment dated 10.06.2004 of the learned Judge of the Provincial High Court of Hambantota, the Appellant filed an appeal No. CA (PHC) 243/2004 to the Court of Appeal – vide the certified copy of the Appeal Brief of the appeal bearing No. CA (PHC) 243/2004 which is marked as **X** in the brief). Their Ladyships of the Court of Appeal by judgment dated 19.01.2016 dismissed the appeal filed by the Appellant. (A certified copy of the judgment dated 19.01.2016 is marked as **Y** in the brief).

Now, I prefer to comment on certain observations and conclusions reached by their ladyships in the Court of Appeal in their judgment dated 19.01.2016.

At pages 3 and 4 of the said judgment dated 19.01.2016 (pages 270 and 271 of the brief), in relation to inquiry No.42/3/93, learned Court of Appeal Judges have stated as follows;

"*At the aforesaid inquiry, the 1st Respondent determined by his order dated 01.07.1982 which is marked as P2(a) that said Dharmasena has not been evicted from the paddy field in issue. But it is specifically stated that after evicting the Appellant from the said paddy field shall be handed over to A.A. Dayasena. (Respondent in the above application by Dharmasena)*"

"*It is seen from the said impugned order made by the 1st Respondent by arriving at the determination that there is no eviction by the Appellant, but nevertheless had made order to the effect that the Appellant should be evicted and the paddy field be handed over to A.A. Dayasena*." (Appellant here means the Appellant in the present application who was named as the occupier in the said inquiry. Dayasena is the 2nd Respondent in the present application who is the land lord. Dharmasena was the applicant in the said inquiry whose position was that he was the tenant cultivator who was evicted.)

It appears from the above statements that there is a misstatement in the above quoted paragraph with regard to the decision of the said inquiry. If one reads the said decision of the inquiry as a whole what has been decided there is;

1. That it was not proved that the applicant tenant cultivator, Dharmasena was evicted on 03.05.1981 as alleged, with the consent of the 2nd Respondent.
2. Transfer of the rights of the tenant cultivator through the Deed No. 1353 is not valid and aforesaid Dharmasena has been cultivating the relevant paddy field as the tenant cultivator from 1977 till 03.05.1981 or a date close to that.
3. The occupier, the Appellant in the present application was liable to be evicted and therefore he is to be evicted and the possession to be handed over to the 2nd Respondent, the land lord.

It must be noted that nowhere in the said decision it is stated that the tenancy of the Dharmasena has been lawfully terminated at any point and he has no rights as a tenant cultivator. By ordering the Appellant to be evicted due to the fact that the said deed is invalid as to the transfer of tenancy rights of the tenant cultivator, there is an indirect finding that the occupier, the appellant is in possession of the paddy field and it is not lawful and contrary to the law indicating that the tenant cultivator, said Dharmasena was not in possession of the paddy land

though he was the tenant cultivator in or around the date of alleged eviction. (Though not evicted as alleged by the application).

Even the Judges of the Court of Appeal dismissed the appeal of the Appellant mainly on the following grounds;

- Present Appellant has not taken steps to challenge the impugned decision in the inquiry No.42/3/93, even though there is a decision to evict him. Even though the said decision to evict him had been informed through the letter marked P2(a), the Appellant had not appealed against the said decision.
- It is abundantly clear that the Appellant had not taken any step to impugned the said order in the appeal made against that by said Dharmasena.
- When there is no appeal made against his eviction within the time allowed such decision become final and conclusive and shall not be called in question in any court or tribunal.
- The impugned document dated 11.08.1982, marked P3 has been denied by the 2nd Respondent. Thus, there cannot be any inquiry as to the appointment of appellant based on that document.

Though the reasons given by the learned High Court Judge as well as the learned Court of Appeal Judges are not in verbatim the same as the reasons, I indicated above to show that the said writ application should have been dismissed, the gist of those two decisions seems to be that there is a valid decision to evict the Appellant that has been confirmed by the Court of Appeal, thus the said writ application had to be dismissed. Court of Appeal also held that on the disputed document marked P3, there cannot be any inquiry. These are among the reasons that I indicated above to say that the writ application should have been dismissed.

Being aggrieved by the said judgment dated 19.01.2016 of the Court of Appeal, the Appellant filed a special leave to appeal application to this Court and this Court had granted leave on the following questions of law No. iii, v and viii mentioned in paragraph 18 of the Petition dated 29.02.2016- vide Journal entry dated 19.09.2019 which are quoted and answered below;

Q.iii. Whether their Lordships of the Court of Appeal as well as the learned High Court Judge of the Provincial High Court of Hambantota have erred in law by failing to appreciate the fact the owner of the paddy land had issued two letters to the Divisional Agrarian Service Officer stating that the Petitioner has been appointed as the tenant cultivator of the said paddy land and as such making a request to do the necessary amendments in to the register of the paddy lands?

A. Answered in the Negative as he cannot be appointed against a valid decision made in the said inquiry No. 42/3/93.

Q.v. Whether their Lordships of the Court of Appeal as well as the learned High Court of Hambantota have failed to appreciate the fact that the 2nd Respondent having accepted the Petitioner as the tenant cultivator could not have moved to evict the Petitioner on the strength of the order dated 01/07/1982 and thereby erred in law?

A. Answered in the Negative as the said stance is denied by the 2nd Respondent and a writ will not be available on disputed facts. On the other hand, as said earlier, before terminating the unlawful occupation and without approval of the Commissioner the appellant cannot be appointed as the tenant cultivator.

Q. viii. Whether their Lordships of the Court of Appeal as well as the learned High Court Judge of the Provincial High Court of Hambantota have failed to appreciate the fact that in the circumstances of this case and specially due to his own conduct the 2nd Respondent was estopped in law from seeking to eject the Petitioner after the expiry of more than 20 years from the order dated 01/07/1982 and thereby erred in law?

A. Answered in the Negative. In fact, even though the original decision in the inquiry was made in 1982, date of the decision of the relevant judgment in appeal is 10.11.1992. Thus, it has not taken 20 years from that judgment. After the said judgment in appeal the 2nd Respondent appears to have requested the 1st Respondent to evict the Appellant as per the said decision and later have appeared to file an application in the high court to get the 1st Respondent to do his public duty in terms of the said decision.

Hence, this appeal has to be dismissed with costs.

Appeal is dismissed with costs.

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Judge of the Supreme Court.

Hon Jayantha Jayasuriya PC, CJ.

I agree.

……

The Chief Justice.

Hon. Kumudini Wickramasinghe J.

I agree.

……...

Judge of the Supreme Court.