

## JAMIS

v.

## YAPA AND OTHERS

SUPREME COURT.

SHARVANANDA, C.J., ATUKORALE, J. AND L. H. DE ALWIS, J.

S.C. APPEAL No. 2/86.

C.A. APPLICATION No. 1070/82.

NOVEMBER 19, 1986.

*Writ of Certiorari—Devolution of tenancy—Right of deceased tenant cultivator—Succession—Jurisdiction—Agrarian Services Act No. 58 of 1979, ss. 8(1) and (2) and 9(1).*

The dispute was whether the paddy land was cultivated as two distinct and separate lots by the appellant's father and the 1st respondent's father or whether it was cultivated as one land jointly by them. The devolution of the tenancy right of the *appellant's father who died in 1974 depended on the resolution of this dispute. If the appellant's father had cultivated distinct lots then his tenancy rights would devolve on his son the appellant. (s.8(1) of the Agrarian Services Act). But if the two lots constituted one paddy land and the appellant's father and the 1st respondent's father cultivated it jointly then on the death of the appellant's father his rights would devolve on the other cultivator. (S.8(2) of the Agrarian Services Act). The dispute being in regard to the devolution of the deceased tenant cultivator's right, it must under s.9 of the Agrarian Services Act be referred for determination to the Commissioner of Agrarian Services.*

The question of the consequent amendment of the Agricultural Lands Register is incidental to the decision on the question of the devolution.

Therefore the reference to the Agrarian Services Committee was wrong and the Committee had acted without jurisdiction as also did the Assistant Commissioner of Agrarian Services in entertaining and deciding the appeal. This want of jurisdiction is not cured by the fact that the appellant preferred the appeal to the Commissioner. Where there is a patent want of jurisdiction a party cannot by acquiescence or waiver confer jurisdiction.

**Case referred to:**

*Beatrice Perera v. Commissioner of National Housing – (1974) 77 NLR 361.*

APPEAL from judgment of the Court of Appeal.

*Faiz Mustapha with K. Balapatabendi* for appellant.

*J. Wilson Fernando with M. J. Hussen* for the 1st respondent.

January 13, 1987.

**L. H. DE ALWIS, J.**

The appellant made an application to the Court of Appeal for the issue of Writs of Certiorari to quash the decision of the Agrarian Services Committee dated 31.6.1981 and the decision of the 7th respondent, the Assistant Commissioner of Agrarian Services, dated 30.11.1981. The Court of Appeal affirmed the two aforementioned Orders and dismissed the application. The appellant now appeals from the judgment of the Court of Appeal with the special leave of this Court.

According to the appellant, his father Charles and the 1st respondent's father Francis Yapa cultivated as tenant cultivators, two distinct and separate lots of paddy field called Irikonda in extent 1 acre 2 roods and 2 perches. Each of their lots was 2 roods and 10 perches. He relied on the certificate of tenancy (P1) issued in 1964 to his father Charles, the extracts of the Paddy Lands Register for the years 1964 to 1970 (P2 to P4) and the receipts for the payment of acreage tax made by his father from years 1962 to 1974 (P5 to P15). Upon the death of his father Charles in 1974, the appellant cultivated his father's lot and his name was entered in the Paddy Lands Register in 1975 (P16) as the tenant cultivator of that lot.

In 1979 the appellant alleged that an amendment was falsely and wrongfully made in the Agricultural Lands Register converting the two separate allotments of paddy field into one paddy field and his name consequently was deleted from the Register as the tenant cultivator of the field. He protested against this alteration to the Agrarian Services Committee and after several communications and postponements he was eventually noticed to appear at an inquiry on 11.8.81.

The 1st respondent's case is that Charles and his own father Francis Yapa cultivated an undivided paddy field in extent 1 acre 1 rood as joint tenant cultivators. On the death of the petitioner's father Charles, his rights as tenant cultivator devolved on his own father, Francis Yapa. Francis Yapa then died in 1976 and the extract or the Agricultural Lands Register 1R6 shows that his eldest son Siripala Yapa was registered as the tenant cultivator of the entire field for that year, and in 1978 the 1st respondent's name was entered in the Register in place of his brother, Siripala (1R7). The 1st respondent

thereafter on 6.1.81 made an application to the Agrarian Services Committee, himself making the allegation that the appellant had got his name falsely inserted in the Paddy Lands Register.

The Agrarian Services Committee held an inquiry on 11.8.81 and by its order which was conveyed to the 1st respondent and the appellant by letter dated 31.8.81 (P27/1R2) amended the Agricultural Lands Register by the deletion of the appellant's name as tenant cultivator of the paddy field and by the substitution of the name of the 1st respondent in its place. The order was made on the basis that where a field is cultivated jointly the rights of a cultivator who dies, devolves on the other cultivator in terms of section 8(2) of the Agrarian Services Act No. 58 of 1979.

The appellant appealed from this decision to the Assistant Commissioner of Agrarian Services on 19.10.81. By letter dated 30.11.81 (P35/1R3) his appeal was dismissed. He then made an application to the Court of Appeal for Writs of Certiorari to quash the decisions P27 and P35 but his application was dismissed and the orders affirmed. The present appeal is from the judgment of the Court of Appeal.

The only matter argued before us by learned counsel for the appellant was that the dispute between the appellant and the 1st respondent related to tenancy rights and should have been referred to the Commissioner for determination in terms of section 9(1) of the Agrarian Services Act, and not to the Agrarian Services Committee who had no jurisdiction to entertain it. It was therefore submitted that the decision of the Agrarian Services Committee, P27, was made without jurisdiction and was a nullity. Further it was submitted that the Commissioner of Agrarian Services to whom the appeal was made had no jurisdiction as an appellate tribunal to hear it and consequently the Order P35 made by him was without jurisdiction and void.

It is manifest that the inquiry of 11.8.81 was held into the application made by the 1st respondent on 6.1.81 for the amendment of the Register of Agricultural Lands. The letter of 31.8.81 (P27) conveying the decision of the Agrarian Services Committee to the parties refers to this application and is captioned "Reasons given at the inquiry into the amendment of the Register of Names". The allegation of the 1st respondent was that the petitioner had falsely had his name

inserted in the Register as tenant cultivator. The appellant himself states that he complained to the Agrarian Services Committee that the 1st respondent had got the two separate lots of paddy land entered as one paddy land in the register and wrongfully had the appellant's name deleted from the register as tenant cultivator. According to the appellant the inquiry held on 11.8.81 was into his protests regarding the amendment of the Paddy Lands Register, although P27 clearly shows that it was held into the applications of the 1st respondent. Be that as it may, the parties are nonetheless agreed that the inquiry of 11.8.81 was held into an application for the amendment of the Agricultural Lands Register.

The procedure for the amendment of the Agricultural Lands Register is set out in the regulations made in accordance with section 45(1) of the Agrarian Services Act. This section provides for the preparation, revision and maintenance of a register of agricultural lands and entrusts the Agrarian Services Committee of the area where the lands are situated, with the task of doing this. Section 45(2) states that there shall be specified in the register the name and extent of each agricultural land, the name of the landlord and tenant cultivator or owner cultivator and such other particulars as may be required by the Commissioner. Section 45(3) makes such an entry in the register prima facie evidence of the facts stated therein. Section 45(4) provides for the making of regulations in respect of the procedure to be followed in the preparation and revision of the register and for a person who claims to be entitled under this Act, to have his name entered in the register and for a person whose name is entered in the register to apply to the Agrarian Services Committee to have the name of any other person removed from the register.

Regulations have been made by the Minister of Agricultural Development and Research under section 66 of the Agrarian Services Act and are published in Government Gazette No. 66/14 of 14.12.1979 (p. 36).

Every application for the amendment of the register must be made to the Agrarian Services Committee under regulation 11(1). The Committee after inquiry allows or disallows the application under regulation 12(1). An aggrieved party may within 30 days of the order appeal to the Commissioner whose decision, subject to an appeal to the Court of Appeal on a question of law, is final.

An application to amend the Agricultural Lands Register therefore must be made to the Agrarian Services Committee.

Section 8 of the Agrarian Services Act, on the other hand, provides for the devaluation of rights of a tenant cultivator. Subsection (1) applies to a tenant cultivator who does not cultivate a paddy land jointly or in rotation with any other tenant cultivator and specifies the persons who succeed to his rights on his death, where no nomination of a successor has been made. Subsection (2) relates to a tenant cultivator who cultivates a paddy land jointly or in rotation with any other tenant cultivator and provides that on his death, his rights shall devolve on the other tenant cultivator or cultivators.

Section 9(1) provides that a dispute as to the person on whom the rights of the tenant cultivator shall devolve on his death shall be referred for determination to the Commissioner within whose jurisdiction the land is situated.

Any party aggrieved by the determination of the Commissioner may within thirty days of the determination, appeal to the Court of Appeal on a question of law.

A dispute thus in regard to devolution of a tenant cultivator's right, on his death, must be referred to the Commissioner for determination.

The dispute in the present case is as to whether the paddy land in question was cultivated jointly or not, by the father of the appellant and the father of the 1st respondent. It was referred to the Agrarian Services Committee as requiring the amendment of the Agricultural Lands Register. The question now is whether such a dispute regarding the character of the cultivation of a paddy land, involves a dispute as to the devolution of the rights of a tenant cultivator. If it does, it must then be referred for determination to the Commissioner and not to the Agrarian Services Committee.

Section 9(1) of the Act provides that a dispute as to the person to whom the right of *such tenant cultivator under this Act* devolves, shall be referred for determination to the Commissioner; "such tenant cultivator under this Act" refers to the two types of tenant cultivators described in section 8(1) and 8(2). Section 8(1) refers to a tenant cultivator who does not cultivate a paddy land jointly with any other

tenant cultivator. On his death, in the absence of nomination of a successor, his rights devolve in the manner specified in the subsection. Section 8(2) refers to a tenant cultivator who cultivates a paddy land jointly or in rotation with any other tenant cultivator or cultivators and in that case, on his death, his rights devolve on the other tenant cultivator or cultivators. Subsection (1) and (2) to section 8 specify two different rules of succession, depending on the character of the cultivation of the paddy land by the tenant cultivator. Hence before the specified rule of succession can be applied, it must first be determined whether the paddy land was cultivated by the tenant cultivator jointly or not. The determination of the character of the cultivation is therefore fundamental to the devolution of the tenant cultivator's rights.

In my view, therefore, the question whether a tenant cultivator cultivates a paddy land jointly or not is involved in a dispute regarding the devolution of that tenant cultivator's rights. Section 9 which deals with disputes relating to succession to a tenant cultivator's rights requires that the dispute shall be referred to the Commissioner for determination.

In the present case the dispute centres on the question whether the paddy land was cultivated as two distinct and separate lots by the appellant's father and the 1st respondent's father or as one paddy land cultivated jointly by them. On the determination of this dispute depended the manner of devolution of the tenancy rights of the appellant's father who died in 1974. If he cultivated a distinct allotment of paddy land, as maintained by the appellant, then his tenancy right would devolve on his son the appellant according to section 8(1). But if the two lots constituted one paddy land and he cultivated it jointly with the 1st respondent's father, as is the 1st respondent's case, then on his death his rights would devolve on the other cultivator, namely the 1st respondent's father in terms of section 8(2).

It is therefore abundantly clear that the dispute as to the character of the cultivation necessarily involved a dispute as to the devolution of tenancy rights.

It is true that the determination of the dispute entails the amendment of the register but that is only incidental to the determination of the dispute.

In this case P27 in fact shows that the Agrarian Services Committee had come to a finding that the rights of the appellant's father devolved on the 1st respondent's father in terms of section 8(2) of the Act, on the basis that the paddy land was jointly cultivated. In arriving at this decision the committee was clearly deciding the question of the devolution of tenancy rights, which by section 9(1) is entrusted for determination to the Commissioner. The Committee therefore had no jurisdiction to determine the dispute and their decision P27 is void for want of jurisdiction. Similarly the Assistant Commissioner had no jurisdiction to entertain an appeal from that decision and its order P35 is also a nullity.

No doubt the appeal was instituted by the appellant, but where there is a patent want of jurisdiction in the matter, a party cannot by acquiescence or waiver of objection confer jurisdiction on a body, which has none. *Beatrice Perera v. Commissioner of National Housing* (1).

I am accordingly of opinion that the order of the Agrarian Services Committee (P27) and the Order made in appeal by the Assistant Commissioner of Agrarian Services (P35) have been made without jurisdiction and are void.

I therefore set aside the judgment of the Court of Appeal and allow the appeal. Writs of Certiorari will now issue to quash the decision of the 2nd to the 6th respondents dated 31.8.1981 (P27) and that of the 7th respondent dated 30.11.1981 (P35).

As the appellant was himself responsible for the procedure adopted, I make no order for costs in his favour.

**SHARVANANDA, C.J.**—I agree.

**ATUKORALE, J.**—I agree.

*Appeal allowed.*

*Writs of Certiorari issued.*