

**NIMALARATNE**  
**v.**  
**ASST: COMMISSIONER OF**  
**AGRARIAN SERVICES**

COURT OF APPEAL  
JAYASINGHE, J.  
JAYAWICKREMA, J.,  
CA 111/95 (PHC)  
PHC KEGALLE NO. 229  
11<sup>TH</sup> JANUARY, 2000  
05<sup>TH</sup> MAY, 2000

*Constitution Article 154P(4), 154G(1)(5)a, (G)(7) 13<sup>th</sup> Amendment - Provincial List - Agrarian Services Act 58 of 1979, S.5, 9 - Eviction - Does the Provincial High Court have jurisdiction - Devolved subjects - High Court of the Provinces (Special Provisions) Act 19 of 1990 - S.3, S.4, S.5*

The High Court held that inquiries with regard to Agrarian Services fell out side the writ jurisdiction of the Provincial High Court as it is not provided for in the Provincial Council List.

**On appeal**

**Held :**

(1) Legislative Authority of the Provincial Councils are provided for in the 13<sup>th</sup> Amendment.

(2) Agriculture and Agrarian Services is a devolved subject - (Item 9 - Provincial Councils List). However there is no reference to inquiries under the Agrarian Services in the Provincial Council List.

(3) At the time the promulgation of the 13<sup>th</sup> Amendment, Agrarian Services Act 58 of 1979 was operative. S.5 provided for inquiries by the Commissioner where there was eviction and S.9 provided for deciding disputes regarding devolution of rights of tenant cultivators. Appeals were to the Board of Review - S.42(b) of the Agrarian Services Act 4 of 1997 (Amendment).

(4) The legislature when enacting Act 19 of 1990 was aware of the composition of the Provincial High Court List and the concurrent list. It was contemplated that inquiries under Act 58 of 1979, are to be dealt

with under the concurrent list, then it would not have given the High Court power to deal with Orders under S.5 and 9 by Act 19 of 1990.

(5) If the view that inquiries under the Agrarian Services Act are not amenable to writ jurisdiction of the High Court of the Provinces is supportable, then Art. 154P(4) would be without any meaning.

(6) Agrarian Services is devolved on the Provincial Councils and mechanism for adjudication of disputes arising therefrom is provided for in the Agrarian Services Act and the appellate procedure is provided for in Act 19 of 1990.

(7) Creation of the High Court of the Provinces was to give effect to the devolution of power that arose with the 13<sup>th</sup> Amendment.

**APPEAL** from the order of the Provincial High Court of Kegalle.

*S.C.B. Walgampaya* with *W.A.N. Jayanath* and *S.A.I.S. Suraweera* for Petitioner - appellants.

*Nimal Jayasinghe* with *P.P. Gunasena* for 2<sup>nd</sup> Respondent - Respondent.

*Cur. adv. vult.*

July 28, 2000.

**JAYASINGHE, J.**

The Petitioner-Appellant filed this appeal against the order of the learned High Court Judge of the Provincial High Court of Kegalle dated 28. 07. 1995 refusing to issue a writ of certiorari to set aside the orders "P14" and "P17".

The Petitioner-Appellant averred that the 2<sup>nd</sup> Respondent-Respondent who was the tenant cultivator sold his and rights to the Appellant in the year 1975; that upon a complaint made by the 2<sup>nd</sup> Respondent-Respondent that he has been unlawfully dispossessed by the Appellant, the Magistrate after inquiry made under Section 66 of the Primary Courts Procedure Act placed the Appellant in possession (P3). Thereafter the 2<sup>nd</sup> Respondent made an application under Section 5(3) of the Agrarian Services Act against the Appellant to the Assistant Commissioner and the Assistant Commissioner made an ex parte order against the Petitioner-Appellant for non appearance (P4). The Petitioner-Appellant then filed affidavit

explaining his default and the *exparte* order "P4" was set aside by the order "P7". Thereafter the Commissioner again sought to evict the Appellant from the land in question by an application filed in the Magistrate's Court. However upon the Appellant explaining to the Commissioner that "P4" had been set aside by the order "P7", the Commissioner withdrew his application in the Magistrate's Court.

Thereafter on an application made by the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent made order (P14) evicting the Appellant in terms of "P4" which had already been withdrawn. Thereafter the Petitioner made an application to the 3<sup>rd</sup> Respondent to have "P14" set aside which was refused by order "P17".

The Appellant preferred an application to the Provincial High Court for a writ of certiorari to have "P14" and "P17" set aside.

The learned High Court Judge after inquiry held that even though Agriculture and Agrarian Services are set out in the Provincial Council List, inquiries in respect of any of the matters referred to in the Provincial Council List and the matters referred to in the Concurrent List are not determinable by the Provincial High Court and that inquiries with regard to Agrarian Services fell out side the writ jurisdiction of the Provincial High Court as it is not provided for in the Provincial Council List.

According to Article 154 P (4)

Every High Court shall have jurisdiction to issue, according to law -

- (a) orders in the nature of *habeas corpus*, in respect of persons illegally detained within the Province; and
- (b) order in the nature of writs of Certiorari, Prohibition, Procedendo, Mandamus and Quo warranto against any person exercising, within the Province, any power under

- (i) any law; or
- (ii) any statutes made by the Provincial

Council established for that Province, in respect of any matter set out in the Provincial Council List.

Any law referred to above is referable to all matters set out in the List I.

Legislative authority of the Provincial Councils are provided for in the 13<sup>th</sup> Amendment.

**Article 154G (1)** provides that;

Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule.

**Article 154G (5) (a)** provides that;

Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule after such consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.

(b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.

**Article 154G (6)** provides that;

If any provisions of any statute made by the Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of this article, the provisions of such law shall prevail and the provisions of the statute shall, to the extent of such inconsistency be void.

Therefore the power to enact statutes is found in Section 154G (1) subject to the qualifications found in Articles 154G (5) (a), (b) and 154G (6).

There was no argument presented before Court that item 29 on the Concurrent List fell within any of the articles set out above.

**Article 154G (7)** provides that;

A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule of the Reserved List.

The question for determination before this Court is whether the High Court of the Provinces has the jurisdiction to issue orders in the nature of writs of certiorari and prohibition against an order made by the Board of Review under Agrarian Services Act. Mr. Jayasinghe argued that the order of the High Court Judge was supportable on the ground that the Provincial High Court lacks jurisdiction to issue writs to quash the orders or prohibiting the exercise of powers pertaining to the subjects set out in the Concurrent List of the 13<sup>th</sup> Amendment. He submitted that even though the subject of Agriculture and Agrarian Services are set out in the Provincial Council List inquiries in respect of these matters are set out in the Concurrent List and that the Provincial High Courts assume jurisdiction to issue writs only in respect of subjects set out in the Provincial Council List.

**Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990** provides that;

A High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under section 5 or section 9 of the Agrarian Services Act.

No. 58 of 1979, in respect of any land situated within that Province.

**Section 4** provides that;

A party aggrieved by any conviction, sentence or order, entered or imposed, by a Magistrate's Court, a Primary Court, a Labour Tribunal or by an order made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979 may, subject to the provisions of any written law applicable to the procedure and manner for appealing and the time for preferring such appeals, appeal therefrom to the High Court established by Article 154P of the Constitution for the Province within which such court or tribunals is situated or within which the land which is the subject of the order made under the Agrarian Services Act, is situated.

**Section 5** provides that;

The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, mutatis mutandis, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order.

Agriculture and Agrarian Services is a devolved subject. Item 9 of the Provincial Council List provides that Agricultural and Agrarian Services -

9:1 Agriculture, including agricultural extension, promotion and education for provincial purposes and

agricultural services (other than in inter-provincial irrigation and land settlement schemes, State land and plantation agriculture);

9:2 Rehabilitation and maintenance of minor irrigation works;

9:3 Agricultural research, save and except institutions designated as national agricultural research institutions.

Significantly there is no reference to inquiries under the Agrarian Services in the Provincial Council List. It is for this reason that the High Court Judge has come to a finding that the High Court has no jurisdiction to issue writs of certiorari in respect of matters provided for in the Agrarian Services Act.

At the time of the promulgation of the 13<sup>th</sup> Amendment Agrarian Services Act 58 of 1979 was operative. Section 5 provided for inquiries by the Commissioner where there was eviction and Section 9 provided for deciding disputes regarding devolution of rights of tenant cultivators. Appeals to the Board of Review was provided for under Section 42(b) of the agrarian Services Act 4 of 1991. Therefore there was the mechanism provided in the Agrarian Services Act to deal with disputes that arose out of matters related to Agrarian Services.

The legislature when enacting High Court of the Provinces (Special Provisions) Act No. 19 of 1990 was aware of the composition of the Provincial Council List and the Concurrent List. If it was in the contemplation of the legislature that inquiries under Agrarian Services Act are to be dealt with under the Concurrent List, then it would not have given the High Court power to deal with orders under Section 5 and 9 by Act No. 19 of 1990.

The learned High Court Judge was in error when he held that inquiries referred to as at item 29 in the Concurrent List included inquires under Section 5 and 9 of the Agrarian Services Act.

A prerogative writ lies against an Administrative Authority acting under statute or against an order made by an Administrative Tribunal. If the view of the learned High Court Judge that inquiries under Agrarian Services Act is not amenable to writ jurisdiction of the High Court of the Provinces is supportable, then Article 154P (4) would be without meaning. Agrarian Services is devolved on the Provincial Councils and mechanism for adjudication of disputes arising therefrom is provided for in the Agrarian Services Act and the Appellate Procedure is provided for in the High Court of the Provinces Special Provisions Law. The argument that the High Court of the Provinces is devoid of writ jurisdiction is therefore in-congruous. The creation of the High Court of the Provinces was to give effect to the devolution of power that arose with the 13<sup>th</sup> Amendment.

We hold that the learned High Court Judge was in error when he held that a prerogative writ to quash the proceedings made under the Agrarian Services Act is out side the jurisdiction of the High Court. Preliminary objection is overruled.

**JAYAWICKRAMA, J.** - I agree.

*Preliminary Objection Overruled High Court has jurisdiction.*