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

Punchihewage Wijedasa
Senadeera,
Katuwademada,
Maduwanwela,
Kolonna.

Petitioner

CA (PHC) Appeal No. 129/09
SP/HCCA/RAT/WA/95/2008

VS.

1. Assistant Commissioner of Agrarian Development, Office of the Assistant Commissioner of Agrarian Development, Moragahayata, Ratnapura.

2. Jinadasa Apalawatta, Katuwademada, Maduwanwela, Kolonna.

3. Thalle Dewananda Thero, Sri Mudalindaramaya, Maduwanwela, Kolonna.

Respondents

AND

Punchihewage Wijedasa
Senadeera,
Katuwademanda,
Maduwanwela,
Kolonna.

Petitioner – Appellant

VS.

1. Assistant Commissioner of
   Agrarian Development,
   Office of the Assistant
   Commissioner of Agrarian
   Development,
   Moragahayata,
   Ratnapura.

2. Jinadasa Apalawatta,
   Katuwademada,
   Maduwanwela,
   Kolonna.

3. Thalle Dewananda Thero,
   Sri Mudalindaramaya,
   Maduwanwela,
   Kolonna.

Respondents-Respondents

BEFORE : **W.M.M. Malinie Gunaratne, J. and**
P.R. Walgama J.

COUNSEL	:	Athula Perera with Chathurani de Silva for the Appellant.
		Ruwanthi Herath Gunaratne S.C. for the 1st Respondent.
		Chandrasiri de Silva with Nadira Weerasinghe for the 2nd Respondent.
Argued	:	10 08 2015
Written submissions filed on	:	21.08.2015, 23.10.2015 and 30,11.2015
Decided on	:	23.02.2016

Malinie Gunaratne, J.

The Appellant in this Appeal has sought to impugn the Judgment of the learned Civil Appellate High Court Judge of Ratnapura dated 19.08.2009, wherein the learned High Court Judge had dismissed the Petition of the Appellant.

The Appellant had instituted the action No. 95/98 in the High Court of Embilipitiya, seeking to quash, the letter dated 24.10.2007 marked as 'P 6' issued by the 1st Respondent, Assistant Commissioner of Agrarian Development, by way of a Writ of Certiorari.

The facts that have given rise to the present application are briefly as follows:

In respect of the ownership of the paddy field called "Dambagaha Aswedduma" alias "Dangaha Aswedduma", there was a dispute between

the 2nd Respondent – Respondent (hereinafter referred to as the 2nd Respondent) and the 3rd Respondent – Respondent (hereinafter referred to as the 3rd Respondent). A case had been instituted by the 3rd Respondent against the 2nd Respondent in the District Court of Embilipitiya bearing No. 4522. The Judgment was delivered in that case in favour of the 2nd Respondent declaring that the 2nd Respondent is the owner of the paddy field in dispute.

Being aggrieved by the said Judgment the 3rd Respondent had preferred an appeal to the Civil Appellate High Court. In the meantime, the 2nd Respondent made an application for the Writ pending appeal and after an inquiry, the Court issued the Writ. The Appellant and his wife by way of a Petition, objected to the Writ being executed evicting the Appellant from the paddy field in question, on the basis that the Appellant, since 1975 worked as a Anda Cultivator and he is protected under the Provisions of the Agrarian Development Act No. 46 of 2000.

At the same time, Appellant made a complaint to the 1st Respondent, Assistant Commissioner of Agrarian Development complaining that the 2nd Respondent is seeking to eject him from the paddy field in question.

The 1st Respondent by his letter dated 03.10.2007 informed the Appellant that, though the ownership of the land is changed, the Appellant could continue as the Anda Cultivator of the paddy field and that the Appellant could participate at the "Kanna Meetings" of the paddy fields.

However, subsequently, the 1st Respondent, by his letter dated 24.10.2007 had taken a different position and had informed the Appellant that, as the District Court of Embilipitiya had granted the possession of the

paddy field in question to the 2nd Respondent and also as there is no reference in that case made in respect of the "Anda Rights" of the Appellant over the paddy field and since the Court has taken a decision on the matter, that he suspends the operation of the letter dated 03.10.2007, from which permission was granted to the Appellant to cultivate the paddy field in question.

In these circumstances, the Appellant instituted the present application in the High Court seeking to quash the said decision of the 1st Respondent as the said decision of the 1st Respondent is contrary to the provisions in the Agrarian Development Act No.46 of 2000. The learned High Court Judge by his order dated 19.08.2009 refused to issue a Writ of Certiorari and dismissed the Petition.

Being aggrieved by the Judgment of the learned High Court Judge the Appellant has preferred this Appeal.

When this Appeal was taken up for argument on 10.08.2015, after conclusion of oral submissions by Counsel, parties have tendered their written submissions and same have been filed.

The learned Counsel for the Appellant contended that it was an admitted fact that the Appellant was in possession of the paddy field in question and that he was not a party to the District Court of Embilipitiya Case bearing No. 4522/L. Further contended, when the Appellant became aware that his tenancy rights over the land are going to be affected the Appellant had made the complaint referred to in 'P 5'. The learned Counsel further contended by the said letter 'P 5', the 1st Respondent had informed the Appellant that he could continue as the tenant cultivator. It is the stance

of the learned Counsel for the Appellant that the letter (P 6), sent subsequently by the 1st Respondent to the Appellant, suspending the operation of the letter (P 5) dated 03.10.2007 is contrary to the express provisions in the Agrarian Development Act No. 46 of 2000. The learned Counsel further contended, that there was a failure of Natural Justice, since there had been no hearing prior to the decision.

The learned High Court Judge was of the view, that the 1st Respondent had taken the decision contained in 'P 5' also ex parte without giving hearing to the 2nd Respondent. At least, a copy of 'P 5' had not been sent to the 2nd Respondent.

It is to be noted, the Appellant had not tendered a copy of the letter on which the 1st Respondent acted upon to issue the letter 'P 5' dated 03.10.2007. The learned High Court Judge had observed, the Appellant's complaint to the 1st Respondent is a very vital and material document in deciding the Appellant's application. However, the Appellant had not tendered a copy of the said letter when filing the Petition in the High Court. A Petitioner who seeks relief by way of Writ which is an extraordinary remedy must in fairness to this Court, bear every material fact so that the discretion of this Court is not wrongly invoked or exercised. In the instant case the said letter, is indeed a material fact which has an important bearing on the question.

In the absence of the said letter a serious doubt arises as to whether the Appellant had misrepresented the correct facts to the 1st Respondent. It is important to note, in 'P 6', the 1st Respondent has stated that he was unaware of the execution of the Writ when he issued 'P 6'. It was the

contention of the 1st Respondent, after receiving the letter 'P 5', the 2nd Respondent informed the 1st Respondent sending a letter (X) that the 1st Respondent by sending 'P 5' has challenged the Court order in the execution of which peaceful possession of the paddy field was handed over to him by the fiscal of the Court. Counsel for the 1st Respondent contended, if 'P 6' was not issued, the 1st Respondent would have been in contempt of Court and he had no option but to issue 'P 6'.

In the case at hand I hold that a hearing was not a pre-requisite for making a recommendation. The 1st Respondent was entitled to form an opinion without a prior hearing. He was not legally required to make a recommendation. It was sufficient for him to form an opinion on the available materials.

Accordingly, I am of the view that the 1st Respondent has acted in proper motive and in good faith.

The granting of a Writ is a matter for the discretion of Court and Court is bound to take into consideration the consequences which by the issue of the Writs sought, will entail. A Petitioner seeking a prerogative Writ is not entitled to relief as a matter of course, as a matter of right or as a matter of routine.

Halsbury, Volume ll pages 85 and 86, Simonds Edition:- "The grant of a Writ is as a general rule, a matter of discretion of the Court. It is not an order granted as of right and it is not issued as a matter of course. Accordingly, the Court may refuse the order, not only upon the merits but

also by reason of the special circumstances of the case. (Halsbury's Laws of England).

On perusal of the Judgment, it is apparent that the learned High Court Judge has taken into consideration the affidavits and documents filed by parties and had come to his conclusion.

As such, I do not see any wrong in the manner in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

For the above stated reasons, I see no basis to interfere with the Judgment of the learned High Court Judge. Accordingly, I affirm the Judgment of the learned High Court Judge dated, 19.08.2009. and dismiss the Appeal with costs.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal dismissed.