

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

In the matter of an appeal in terms of
Article 154P of the Constitution read
with Section 11 of the High Court of
the Provinces (Special Provisions) Act,
No. 19 of 1990.

01.Narandeniye Deepananda Thero,
Kondagala Viharaya,
Weeraketiya.

Case No. Ca (PHC) 122/2011

HC (W) 20/2010

Petitioner – Appellant

Vs.

01.Martin Ekanayake,
No. 47/1, Biliaththa Road,
Kondagala,
Weeraketiya.

02.Assistant Commissioner Agrarian
Development,
Agrarian Development Office,
Hambantota.

Respondent – Respondent

Before : W.M.M.Malani Gunaratne, J
: P.R.Walgama, J

Counsel : Ranga Dayananda for the Petitioner – Appellant.
: Rohan Sahabandu PC. With Ms. Hasitha
Amarasinghe for the 1st – Respondent –
Respondent.

Argued on : 20.11.2015

Decided on: 25.05.2016

CASE NO: CA (PHC) 122/2011 – JUDGMENT - 25/ 05/ 2016

P.R.Walgama, J

The instant appeal lies against the order of the Learned High Court Judge dated 08.09.2011, for having refused the application of the Petitioner-Appellant for an issuance of a mandate in the nature of a writ of Certiorari to quash the order of the 2nd Respondent, and to make order compelling the 2nd Respondent to hold a proper inquiry regarding the application of the Petitioner – Appellant.

The Learned High Court Judge has refused the said Application of the Petitioner – Appellant by the afore said impugned order. Being aggrieved by the said order the Petitioner has appealed to this Court to have the said order set aside or vacate.

The following facts surfaced from the petition of appeal;

That the Petitioner – Appellant is the owner of the paddy land known as Aluthwewamulana containing in extent A1-R1-P0. In proof of the above, the document marked P1 is tendered, deemed to be the extract from the Agricultural Land Register.

That the 1st Respondent had claimed the anda rights from the Petitioner – Appellant.

That the 1st Respondent on 29.11.2009 made a complaint under No. HA/04/MISSALANIOUS/ 2008, to the Assistant Commissioner of Agrarian Development of Hambantota, that he is the tenant cultivator of the disputed land and therefore to take necessary steps to protect his rights;

Thereupon an inquiry was held and it was decided that the 1st Respondent is the tenant cultivator of the subject land and the Petitioner- Appellant should not disturbed the rights of the 1st Respondent. The said order is marked as P5A.

In the said backdrop the Petitioner – Appellant had invoked the jurisdiction of the Provincial High Court for an issuance of a writ of Certiorari to quash the said decision of the 2nd Respondent.

It is further contended by the Petitioner – Appellant, that he was not afforded an opportunity to

participate at the inquiry , and therefore the said inquiry was held in violation of the rules of natural justice.

The Learned High Court Judge after taking in to consideration, the facts placed by both parties has handed down the above impugned order, dated 08.09.2011, and dismissed petition accordingly.

The core issue to be determined in the instant matter was raised by the 2nd Respondent, that

As per Article 154 (p)(4)(2) of the 13th Amendment to the constitution, the Provincial High Courts are vested with the writ jurisdiction;

As per above Article the High Court of Province could exercise the said power against any officer who is exercising his powers within the province;

That in the instant matter the Assistant Commissioner of Agrarian Development exercising his powers in terms of Section 38(5) of the Agrarian Development Act No.46 of 2000, as the Commissioner General of Agrarian Development, and therefore the Commissioner General exercises his powers island wide, and as such any relief sought against him should be in the Appellate Court and not in the Provincial High Court.

The core issue in the instant application is that to decide whether the Provincial High Court is empowered to make any order to quash any

determination made, by way of a writ of Mandamus in terms of the sections of the Agrarian Development Act No. 46 of 2000.

Article 154 (p)(4) of the 13TH Amendment to the Constitution provides thus;

Every such High Court shall have jurisdiction to issue, according to law;

a. Orders in the nature of Habeas Corpus, in respect of a 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;

1. Any law; or

2. Any statues made by the Provincial Council established for that province

In respect of any matter set out in the Provincial Council list.

Therefore it is abundantly clear that that the Provincial High Court is empowered to issue an order in the nature of a writ only on matters arising within the province in respect of any matter coming within the Provincial list.

It is also to be noted that the High Court of Province is empowered to issue writs in respect of

only those matters enumerated in the Provincial Council list (1) contained in the Ninth Schedule to the 13th Amendment to the Constitution and any authority exercising the powers within the province.

The item 9 of the of the Provincial Council list deals with the matters relating to Agriculture and Agrarian Services and item 18 contains matters pertaining to land set out in Appendix II.

The said item 9 enumerates thus;

Agriculture and Agrarian Services-

9.1- Agriculture including agricultural extension, promotion and education for provincial purposes and agricultural services other than in interprovincial irrigation and land settlement schemes, State land and plantation agriculture'

9.2- Rehabilitation and maintenance of minor irrigation work.

9.3- Agriculture research, save and except institutions designated as national agricultural research institution.

Item 18

LAND- Land that is to say, rights in or over the land, land tenure transfer and alienation of land, land use, land settlement and improvement to the extent set out in Appendix ii. The Learned High Court

Judge has dismissed the petition of the Petitioner - Appellant on the basis that the High Court of Province, stands denuded of jurisdiction to issue a writ, since the same has observed and affirmed and given the following interpretation in the case of wijesuriya .vs. Nimalawathi Wanigasinghe (S.C.Appeal No. 33/2007).

“While ‘within’ may give rise to multiple interpretations the only reasonable interpretation in the light of the legislative history and purpose of Article 154(P)(4)(b) and in deed the 13th Amendment as a whole, is that it refers to that qualitative nature and scope of the power at issue and not necessarily the geographic location of the person who exercised it. In other words the question that this ‘within’ requirement leads us to determine is whether the power at issue is one exercised from or as part of a currently acting authority or position?, and the only logical, reasonable and conclusive determination is that it is exercised from a centrally acting authority or position”(emphasis added).

Hence in the above interpretation of the exercising the powers ‘within’ means is ‘as part of ,a centrally acting authority or position’.

Thus for the above compelling reasons I am of the view that the Learned High Court Judge has arrived at a correct determination and as such ~~up~~ I ^{up} hold

the impugned judgment and dismiss the appeal
subject to a cost of Rs. 5000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malani Gunaratne, J
I agree,

JUDGE OF THE COURT OF APPEAL