

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

**In the matter of an Application for a mandate in the  
nature of *Writ of Certiorari* under article 140 of the  
Constitution of the Democratic Socialist Republic of  
Sri Lanka**

Kalu Arachchige Allen Nona,  
264/D Nadagamuwa,  
Kotugoda.

**PETITIONER**

**C.A. Writ 23/2013**

**Vs,**

1. Sunil Weerasinghe,  
Commissioner General of Agrarian Development,  
Department of Agrarian Development,  
42, Sir Macus Fernando Mw,  
Colombo 07.
2. P.S. Bandara,  
Assistant Commissioner of Agrarian Development,  
Agrarian Development District Office,  
Sri Bodhi Road,  
Bandiyamulla –Gampaha.
3. Ranjith Ekanayake,  
235 Mel Nivasa,  
Nadagamuwa,  
Kotugoda.

4. Arangalage Jayantha Wijesighe,  
301 A, Nadagamuwa,  
Kotugoda.
5. Arangalage Sarath Kumara Abeyasekera,  
232, Abey Nivasa,  
Nadugamuwa West,  
Kotugoda.

## RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

Counsel: Hejaaz Hizbullah with Ranjith Henry for the Petitioner  
Manohara Jayasinghe SC for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents  
Manohari S. Perera with Chanaka Kulatunga for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents

Argued on: 23.09.2015

Written Submissions on: 16.11.2015, 17.02.2016

Order on: 10.06.2016

## Order

**Vijith K. Malalgoda PC J**

Petitioner K.A. Allen Nona had come before this court seeking a *Writ of Certiorari* to quash the determination marked P-8 made by the 2<sup>nd</sup> Respondent under section 90 of the Agrarian Development Act No. 46 of 2000.

When this matter was taken up for argument before this court the counsel for the Respondents have raised preliminary objections for the maintainability of this application before this court.

The objections raised by the Respondents were twofold. Firstly they took up the position that the Court of Appeal has no jurisdiction to hear and determine the present application and only the Provincial High Court has the jurisdiction, under the provisions of the 13<sup>th</sup> Amendment to the Constitution.

Secondly the Respondents challenge the locus standi of the Petitioner to come before this court.

Article 154 (4) of the Constitution of the Democratic Socialist Republic of Sri Lanka reads thus,

154 P (4) Every such High Court shall have jurisdiction to issue according to law

- b) Order in the nature of *Writ of Certiorari, Prohibition, Procedendo, Mandamus* and *quo warranto* against any person exercising within the province any power under
  - i. any law or
  - ii. any statute made by the Provincial Council established for that Province
  - iii. respect of any matter set out in the Provincial Council List

Out of the 37 subjects enumerated in the Provincial Council List item 9 of the Provincial Council list reads as follows;

#### 9. Agriculture and Agrarian Services:-

- 9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than 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

As observed above, with the implementation of the provisions of the 13<sup>th</sup> amendment to the constitution and with the introduction of Provincial Councils, Writ Jurisdiction with regard to certain matters were conferred with the Provincial High Courts when certain conditions are satisfied. As referred to in the relevant Constitutional Provisions, the said requirement can be summarized as follows;

- i. The Writ must be sought against a person exercising power within the Province
- ii. The power so exercised must be under either a law or a Provincial Council Statute
- iii. The said law or statute must relate to a matter set out in the Provincial Council List

The Agrarian Services Act was repealed in the year 2000 with the introduction of the Agrarian Development Act and the long title to the Agrarian Development Act describes the Ambit of the Act as follows;

“An act to provide for matters relating to landlords and tenant cultivators of paddy lands, for the utilization of agricultural lands in accordance with agricultural policies for the establishment of Agrarian Development Councils, to provide for the establishment of a land bank and Agrarian Tribunals ....”

From the description given to the ambit of the said act, it is clear that the said Act fulfills the requirement to the title “Agriculture and Agrarian Services” referred to in section 9 of the Provincial Councils list if a purposive interpretation is given as referred to by the Supreme Court in the case of *Madduma Banda V. Assistant Commissioner of Agrarian Services and Another 2003 (2) Sri LR 80*.

In this case the Supreme Court held,

“The word ‘Agrarian’ in section 9 of the Provincial Council list relates to landed property and such property could no doubt attract paddy lands and tenement cultivators of such land and hence the impugned order would be covered by the said section 9 in the Provincial Councils List.

In the case of ambiguity the enactment should be interpreted so as to give effect to its purpose. The purpose of the 13<sup>th</sup> Amendment is to give a right to an aggrieved party to have recourse to the Provincial High Court instead of having to seek relief from the Court of Appeal in Colombo. As such the High Court is deemed to have jurisdiction to grant writ sought under Article 154 P (4).”

However if the particular Act or Statue does not fall or falls outside the subjects enumerated in the Provincial Council list in such a situation the Provincial High Court would not have jurisdiction to entertain writ applications.

In the case of *Weragama V. Eksath Lanka Wathu Kamkaru Samithiya 1994 (1) Sri LR 293* the Supreme Court held;

“The Industrial Disputes Act and any other enactments which may confer powers on Labour Tribunals are not within the scope of any item or matter in the Provincial Council List; and also.... it is only the Reserved List which contains any item or matter which would cover those enactments and Labour Tribunals- ‘Justice in so far as it relates to the judiciary and the courts structure [including].... jurisdiction and powers of all courts....’ Accordingly, those enactments would not fall within ‘any law.... in respect to any matter set out in the Provincial Council List’, and the High Court [of the Province] would not have writ jurisdiction over Labour Tribunals.”

It is further observed by this court that the document sought to be quashed i.e. P-8 is signed by the Assistant Commissioner of Agrarian Development for the Gampaha District at Gampaha Office. The

said Assistant Commissioner has made the impugned order acting under the provisions of the Agrarian Development Act No. 46 of 2000 and the present case refers to a decision made by the 2<sup>nd</sup> Respondent under section 9 (1) of the Agrarian Development Act with regard to the rights of using a threshing floor or of the existence of an agricultural road and as discussed above, when purposive interpretation is given, the said act comes within section 9 of the Provincial Council list and therefore it is clear that all the requirement needed under Article 154 P (4)(b) have been fulfilled in the present case.

Therefore it is clear that under Article 154 P (4) of Constitution, the Provincial High Court has been conferred the Jurisdiction to hear and determine the present case as submitted by the Respondents.

However, it is also important to consider the effect of Article 154 P (4) (b) on the jurisdiction conferred on the Court of Appeal under Article 140 of the Constitution.

Article 140 of the Constitution reads thus,

Article 140 subject to the provisions of the constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any court of first instance or tribunal or other institution, and grant and issue according to law, orders in the nature of *Writs of Certiorari, Prohibition, Prosedendo, Mandamus* and quo warranto against the judge of any court of first instance or tribunal other institution or any other person.

When Article 154 P (4) conferred the jurisdiction with the High Court, the powers already conferred with the Court of Appeal with regard to the areas covered under sub-article (b) had not been taken away from the Court of Appeal.

This issue was discussed by Mark Fernando J in the case of *Weragama V. Eksath Lanka Wathu Kamkaru Samithiya* and Others as follows;

“These amendments affected the appellate revisionary, and writ jurisdiction of the Court of Appeal only in two respects. Firstly Article 154 P (3) (b) Conferred appellate and revisionary jurisdiction (but not writ jurisdiction) in respect of Magistrate’s Court and Primary Courts (but not labour tribunal or other courts and tribunals); this was “not withstanding anything in article 138” (and that article was in any event “subject to the provisions of the constitution”) and so either the jurisdiction of the Court of Appeal was protanto transferred to the High Courts or the Court of Appeal and the High Courts had concurrent jurisdiction. secondly, Article 154 P (4) conferred writ jurisdiction over any person exercising within the province, any power under any law or statute specified there in; this was not stated to be “exclusive” or “not withstanding anything in Articles 140 and 141” and hence the High Court had concurrent jurisdiction with the Court of Appeal.

This issue was once again discussed by Sri Skandarajah J in the case of *Nilwala Vidulibala Company (Pvt) Ltd V. Kotapola Praseshiya Saba and Others 2005 (1) Sri LR 296* as follows;

“Writ jurisdiction conferred on the Provincial High Court is Concurrent with the jurisdiction of the Court of Appeal and Article 140 and the latter has not been diminished by the 13<sup>th</sup> amendment.”

Under these circumstances it is understood that with regard to the applications come within Article 154 P (4) of the Constitution, Provincial High Courts are conferred with concurrent jurisdiction with the Court of Appeal.

In their second objection the Respondents have challenged the locus standi of the Petitioner on the ground that the Petitioner had failed to explicitly disclose the basis for the entitlement to the property in question. When going through the documentation before this court we see no reason to believe that the Petitioner is an outsider or a third party to the inquiry conducted by the 2<sup>nd</sup> Respondent. The documents produced by all the parties such as 1R1, 3R1 clearly refers to the involvement of the Petitioner in obstructing of an agricultural road as alleged by the 3<sup>rd</sup> to 5<sup>th</sup> Respondents and the notice

issued by the 2<sup>nd</sup> Respondent produced marked P-6 and the impugned order P-8 are addressed to the Petitioner herself. The fact that the Petitioner was in control over all the properties referred to in the complaints are well established from the inquiries conduct by the 2<sup>nd</sup> Respondent. It is further observed that the petitioner is a person who is affected from the decision of the 2<sup>nd</sup> Respondent and therefore we are of the view that the Petitioner possesses sufficient interest to this matter.

Under these circumstances we see no reason to dismiss this application based on the preliminary objections raised by the Respondents.

As observed by us the Provincial High Court is conferred with concurrent jurisdiction with the Court of appeal to hear and determine the present case.

Proviso to section 12 of the High Court of Provinces (Special Provisions) Act No 19 of 1990 has given the Court of Appeal a discretion as to which court should hear such application when it is before the Court of Appeal.

Proviso to section 12 of the said Act reads as follows;

“Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154 P of the Constitution if filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so order that such appeal or application be transferred to such High Court and such High Court shall hear and determine such appeal or application.”

As observed by this court, the impugned decision has been given by the 2<sup>nd</sup> Respondent at Gampaha and the parties referred to this application are also from Gampaha.

As observed by Bandaranayake J in the case of *Madduma Bandara V. Assistant Commissioner Agrarian Services and Others*, “the purpose of the 13<sup>th</sup> Amendment to the Constitution is to give a



right to an aggrieved party to have recourse to Provincial High Court instead of having to seek relief from the Court of Appeal in Colombo”

Even though the Petitioner to the present application has decided to come before the Court of Appeal to use its concurrent jurisdiction, with regard to the present application, we are of the view that it is expedient to hear and determine this case in the Provincial High Court of Gampaha rather than in this court.

Therefore we have decided to transfer the present application to the Provincial High Court of Gampaha to hear and determine this case.

Objection overruled, Application is transferred to the High Court of Gampaha.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE COURT OF APPEAL**