

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

Ambilipitiya Sumanasiri Thero,
Dharmadootha
Yogashramayadhipathi,
Walakadayawa,
Utuwankanda,
Mawanella.
Petitioner-Appellant

CA CASE NO: CA (PHC) 9/2010

HC KEGALLE CASE NO: SP/HCCA/KAG/88/2009

Vs.

1. K.A.D. Ananda Peiris,
 2. K.D.W.S. Kodikara,
Both of Wagolla Watte,
Walakadayawa,
Uthuwankanda,
Mawanella.
 3. Chairman,
Pradeshiya Sabha,
Mawanella.
 4. Pradeshiya Sabha,
Mawanella.
- Respondent-Respondents

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Manohara De Silva, P.C., with Boopathi
Kahatuduwa for the Appellant.
L.M.C.D. Bandara for the 1st and 2nd
Respondents.
Priyantha Gamage for the 3rd and 4th
Respondents.

Decided on: 05.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this application in the High Court of Kegalle on 15.05.2009 against the Pradeshiya Sabha of Mawanella seeking to quash by way of writ of certiorari the Gazette Notification dated 18.07.2008 marked P3. The respondent filed objections to this application. After the argument, followed by filing written submissions, the High Court dismissed the petitioner's application on several grounds. This appeal by the petitioner is against the said Judgment.

By the said Gazette, the disputed road, namely, Ananda Maithriya Mawatha, was published as a Pradeshiya Sabha road, "in terms of section 24 of the Pradeshiya Sabha Act, No.15 of 1987". It was further stated in the Gazette itself that, any party who objects to it, can take steps, in terms of section 24(2) of the Pradeshiya Sabha Act, within one month from the date of the Gazette.

Section 24(2) of the Pradeshiya Sabha Act reads as follows:

Upon the publication of such notices any party claiming to be the owner of land from which such road or path has been demarcated shall within the time prescribed by such notice institute action in the appropriate court for establishing his title to such land.

The petitioner with his counter affidavit has tendered a letter marked "A" dated 10.08.2008 addressed to the Pradeshiya Sabha objecting to the said course of action of the Pradeshiya Sabha.

The Pradeshiya Sabha has in their written submission tendered to the High Court disputed this letter, if I understand correctly, as a forgery.¹ That matter cannot be decided in these proceedings.

Even if it is not a forgery, according to section 24(2), what the objecting party shall do is, not to write to the Pradeshiya Sabha within the time prescribed by such Notice, but to institute an action in the District Court to establish his title to such land. This has not been done. Nor has any reason been adduced in the petition for failure to do it.

The petitioner has filed this writ application challenging the Gazette on 15.05.2009, that is, about 10 months after the publication of the Notice in the Gazette. The petitioner has not mentioned a word about this inordinate delay in the petition, which, in my view, is fatal to the application. A person who

¹ Vide page 208 of the brief.

seeks a discretionary remedy such as a writ, shall act in promptitude, and come to Court with least possible delay.

I am unable to accept the argument of the petitioner that, as the Gazette Notification is illegal, delay is not a bar to the maintainability of the application. The Gazette Notification is not *ex facie* illegal or perverse. Such a strong position has not been taken up in the petition. Hence the applicant for writ shall pass the threshold test to proceed further. In my view, in the facts and circumstances of this case, the petitioner has not satisfied the threshold requirement.

The petitioner has explained the basis upon which he challenges the Gazette Notification in paragraph 17 of the petition. The main complaint of the petitioner is the violation of the principles of natural justice. This question does not arise as the Gazette Notification does not constitute a determination of the Pradeshiya Sabha, which could be amenable to writ jurisdiction.

That Notice under section 24(1) of the Pradeshiya Sabha Act is, in my view, investigative in character. That was statutorily open to challenge in the District Court.

The fact that section 24(1) is investigative in character is manifest by reading subsections (3)-(5) of section 24, which spell out the subsequent steps to be taken including further Notices to be published, before such roads become vested in the Pradeshiya Sabha.

This is akin to Section 2 Notice of the Land Acquisition Act. It has been held by our Courts that seeking writ of certiorari to

quash Section 2 Notice of the Land Acquisition Act is premature and not ripe for review.²

The Pradeshiya Sabha by tendering several documents has informed Court that the disputed road has been using by the villagers for some time, and the Gazette Notification was published upon the consent of the Viharadhipathy of the temple, namely, Rev. Meththananda.³ The road runs through the temple property. The petitioner does not accept Rev. Meththananda as the Viharadhipathy. The petitioner says that he is the Viharadhipathy. These are disputed facts which cannot be resolved in a writ application.

On that basis the Pradeshiya Sabha challenges the *locus standi* of the petitioner to file this application.

Affidavits of a number of villagers have been tendered by the Pradeshiya Sabha stating the necessity of this road. The Pradeshiya Sabha also states that this road has been in existence for a long time, and in support of it has *inter alia* tendered V16 (a photograph of a wedding couple walking along this road with the relations) and V17 (the Marriage Certificate of them) to prove that it was there at least from October 2003. Conversely, the petitioner has not tendered a single affidavit from a villager in support of his application.

Writ is a discretionary as well as equitable remedy. A party cannot ask for a writ as of right.

² Dayaratne v. Rajitha Senaratne, Minister of Lands [2006] 1 Sri LR 7, Ranawickrema v. Minister of Agriculture and Lands [2006] 1 Sri LR 42

³ Vide 3,4V2 at page 144 of the brief.

Taking all the facts and circumstances into account, I take the view that the dismissal of the petitioner's application by the High Court is justifiable.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal