

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

Priyantha Jayanath Thelijjagoda,
Galpatha,
Ruwanwella.
Petitioner

CASE NO: CA/WRIT/150/2018

Vs.

1. Yatiyantota Pradeshiya Sabha,
Yatiyantota.
2. R.K. Saman Kumara,
Divisional Secretary,
Yatiyantota.
3. Sujith Sanjaya Perera,
Francis Perera Mawatha,
Yatiyantota.
4. Harsha Siyambalapitiya,
"Ranjani", Ambanpitiya,
Galigamuwa.
5. Hettiarachchige Sunil
Karunathilake,
A/246-1, Kandewatte,
Galpatha,
Ruwanwella.

6. Rupilage Priyantha,
Dayaratna, Ihalagedara,
Galpatha,
Ruwanwella.
7. Kanakanam Thanthirige Nuwan
Kumara Wijesiriwardena,
No.22, Meepitiya Janapadaya,
Kandewatte, Galpatha,
Ruwanwella.
8. Kanakanam Thanthirige Sunil
Wijesiriwardena,
Kandewatte, Galpatha,
Ruwanwella.
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Thishya Weragoda with Prathap Welikumbura
for the Petitioner.
Rohan Sahabandu, P.C., with Hasitha
Amarasinghe for the 1st Respondent.
Madubashini Sri Meththa, S.C., for the 2nd
Respondent.
Chathura Galhena for the 5th-8th
Respondents.

Argued on: 24.08.2020

Decided on: 24.09.2020

Mahinda Samayawardhena, J.

Although the Petitioner filed this application against the Respondents seeking several prerogative writs, at the time of the argument the Petitioner confined the application only to the relief as prayed for in paragraph (d) of the prayer to the petition, i.e. *“a writ of prohibition preventing the 1st-4th Respondents from constructing a roadway over the land claimed by the Petitioner depicted in Plan P1B without recourse to the due process of the law.”*

Plan P1B depicts a land known as Mahawatta in extent of 2 acres and 29.8 perches, which the Petitioner claims title to by Deed of Gift marked P1A. Several lands appearing to abut each other have been gifted to the Petitioner by his father through this Deed.

The complaint of the Petitioner is the 1st-4th Respondents, who are, respectively, the Yatiyantota Pradeshiya Sabha, the Divisional Secretary of Yatiyantota, a Member of Parliament, and a Member of the Sabaragamuwa Provincial Council, are constructing a road “across” his land, Mahawatta, described in Plan P1B, without having followed the proper procedure.

The Petitioner had filed a District Court action on the same cause of action in 2002, i.e. that a road was being forcibly constructed across his lands, Mahawatta and Madagedarawatta, which are contiguous lands. After the trial, as seen from the Judgment marked P3E, the action was dismissed on the merits and not on “technical grounds” as alleged by the Petitioner in paragraph 8 of his written submissions. It is erroneous to say

the Petitioner's action was dismissed by the District Court for non-compliance with section 214(1) of the Pradesheeya Sabha Act. One of the main grounds upon which the Petitioner's action was dismissed by the District Court was the failure on the part of the Petitioner to prove construction of a new road across his lands. The appeal filed in the High Court of Civil Appeal was also dismissed, albeit on the said technical ground.

The Petitioner had thereafter filed a writ application bearing No.CA/WRIT/257/2015 on the same issue, but it appears the application was later withdrawn.

The three Counsel appearing for separate Respondents state in unison that the facts of this matter are in dispute and therefore this Court has no option but to dismiss the Petitioner's application. There is force in this argument.

The main question appears to me to be the identification of the disputed road. It is still unclear where exactly this road is. The learned District Judge in the aforementioned case was also confronted with the same predicament. The Petitioner has not identified the disputed part of the road, which he says runs across his land, by way of a Plan. He alleges the 1st-4th Respondents are constructing a road on his land depicted in Plan P1B. But no such road is shown on this Plan although the Petitioner has tendered several photographs compendiously marked P12 showing the alleged construction. The Court cannot assume that what is shown in those photographs is the road being constructed across the Petitioner's land depicted in P1B. The difficulty relating to the identification of the road is

exacerbated by the fact that other villagers in the area have taken no objection to the widening of any existing road or the construction of a new road.

As seen from his title Deed marked P1A, the Petitioner's entire extent of land comprises several lands.

The 1st Respondent Pradeshiya Sabha, in its statement of objections, intentionally or unintentionally, takes up different positions in identifying the road.

In paragraph 5, for instance, the 1st Respondent admits the road running over the Petitioner's land and tenders the document marked A to say the Petitioner's father gave written consent to the 1st Respondent to use the road as a Pradeshiya Sabha road.

The Petitioner denies this document and further says, in any event, according to the said document his father had not given consent to construct a road across his land.

However, the consent given by this document cannot be in respect of a land other than the Petitioner's land, because the Petitioner's father need not and cannot have given consent in respect of others' lands.

These are disputed questions of fact which cannot be decided by the writ Court.

Then in paragraph 8 of the statement of objections, the 1st Respondent seems to be saying the road runs along the southern boundary of the Petitioner's land, Mahawatta, (and not across the land) and has been in existence since 1986 as a

Gamsabha road, and was thereafter widened after 1988 by the Government.

According to the 1st Respondent, the road in dispute is a gazetted road, as shown in the Gazette marked X, by the name of Kandewatta-Meepitikanda road. This Gazette has been marked by the Petitioner as P6.

Then in paragraph 14, the 1st Respondent says it has not taken any steps to construct a road over the land of the Petitioner but the Development Council has taken steps to develop the said road.

Then in paragraph 18, the 1st Respondent says the 1st Respondent is entitled to construct and use the aforesaid gazetted road running along the boundary of Mahawatte.

This clearly shows the facts are in dispute. The identification of the road is still in question.

Let me now consider what the 2nd Respondent, the Divisional Secretary, says in his objections.

The 2nd Respondent also seems to be taking up contradictory positions in his statement of objections.

In paragraphs 7 and 8(a) of the statement of objections, the 2nd Respondent says the Kandewatte-Meepitigama road runs “alongside” the land of the Petitioner.

Then in paragraphs 9 and 10(c), the 2nd Respondent says the Kandewatte-Meepitigama road runs “through” the land of the Petitioner.

The 5th-8th Respondents, in paragraphs 6 and 7 of their statement of objections, state the disputed road, which is 10 feet wide, has been in existence since 1986 and “is bordering the land owned by the Petitioner.” According to the Gazette marked X/P6, the width of the Kandewatta-Meepitikanda road is 06-02 feet. However, it is not clear whether the name of the disputed road is Kandewatta-Meepitikanda road.

Then, in paragraph 10, the said Respondents say they did not construct a new road over the land of the Petitioner but only developed the existing 10 foot road due to its poor condition.

According to paragraph 13, it is a Pradeshiya Sabha road that has been gazetted in the said Gazette. But the said Respondents do not specifically mention the name of the road.

The Petitioner, drawing attention to P14C, says the said gazetted road does not go through the Petitioner’s lands.

But, according to P14B, the Wekada-Dummaladeniya Pradeshiya Sabha road runs through the Petitioner’s land, Amuhenaya Liyadda. Amuhenaya Liyadda is a land owned by the Petitioner as per Deed P1(a). As I said earlier, these are contiguous lands.

The document P14D refers to another Pradeshiya Sabha road, namely, Meepitikanda road. This road is also referred to in the P6 Gazette.

P15 refers to the Galpatha-Godawela-Udapitiya-Dummaladeniya road.

Far from identifying any existing or proposed road in Plan P1B, the Petitioner does not even, at the very least, state the name of the road he disputes.

When major facts are in dispute necessitating evidence to be led to arrive at a correct finding, this Court cannot exercise writ jurisdiction. However, this is not, in my view, a rigid principle in judicial review. It does not, for instance, apply to situations where a losing party purports to project facts as being in dispute as a defence, nay, sham, whereas in reality it is not so, in order to thwart justice; nor does it apply to situations where a deciding authority has come to an erroneous finding of fact on a manifestly wrong analysis of the evidence.

Unless the disputed road is properly identified, I am unable to even consider whether the unspecified relief sought by the Petitioner, i.e. *“a writ of prohibition preventing the 1st to 4th Respondents from constructing a roadway over the land claimed by the Petitioner depicted in Plan P1B without recourse to the due process of the law”* can be granted.

I dismiss the application of the Petitioner but without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal