

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

**Court of Appeal Case No:**  
**CA/WRIT/86/2024**

In the matter of an application in the nature of Writs of *Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution.

1. Idamegedara Abemanika,  
No. 141/E, Damunupola,  
Dedunupitiya.
2. Rathnayaka Mudiyanse Indika  
Kumara Rathnayaka,  
No. 09, R-686,  
Mandaramnuwara.
3. Rathnayaka Mudiyanse Keerthi  
Kumara Rathnayaka,  
No. 09, R-686,  
Mandaramnuwara.

**PETITIONERS**

**Vs.**

1. Commissioner General of Agrarian  
Development,  
Department of Agrarian Development,  
No. 42, Sir Marcus Fernando  
Mawatha,  
P.O. Box 537, Colombo 07.
2. Deputy Commissioner of Agrarian  
Development,  
P.O. Box 60, Gatambe,  
Peradeniya.
3. Agrarian Development Officer,  
Agrarian Service Centre,  
Hatharaliyadda.

4. Chaminda Premalal Gunawardhana,  
No. 141/E, Damunupola,  
Dedunupitiya.
5. K. G. Sugathapala,  
Muruddeniya, Damunupola,  
Dedunupitiya.

### **RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** P.B. Herath instructed by Chathuranga Hathurusingha for the  
Petitioners.  
Peshan Guneratne, S.C. for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.  
Ershan Ariaratnam for the 5<sup>th</sup> Respondent.

**Supported on:** 26.06.2025

**Decided on:** 04.07.2025

### **Mayadunne Corea J**

The facts of the case briefly are as follows. The three Petitioners and the 4<sup>th</sup> Respondent are co-owners of a land depicted in the Schedule of P1. As per P1, the said land is a paddy land and contains a threshing floor. The 5<sup>th</sup> Respondent had complained to the Deputy Commissioner of the Agrarian Services stating that their usage of the threshing floor had been obstructed by the 4<sup>th</sup> Respondent. Accordingly, an inquiry had commenced and after the conclusion of the inquiry an order had been given by the Deputy Commissioner dated 03.01.2024 (P6), whereby the 4<sup>th</sup> Respondent was ordered not to obstruct the usage of the threshing floor. Having been aggrieved by the said order, the three Petitioners have filed this Writ Application.

The Petitioners have sought the following reliefs among other things:

- “c) *Grant a mandate in the nature of the Writ of Certiorari to quash the order dated 03/01/2024 of the 02<sup>nd</sup> Respondent marked as ‘P6’*”

### **The Petitioners' contention**

The Petitioners contended that the actions or inactions of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents are in violation of the rules of natural justice and their right to a fair hearing. Further they alleged, among other things, that the decision is illegal, *ultra vires*, unreasonable or irrational, discriminatory, procedurally flawed.

### **The Respondents' objections**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, while denying the allegations, contended that the inquiry and the procedure adopted were stipulated under the Act. Further, the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents alleged that,

- The Petitioners have no *locus standi*.
- Suppression and misrepresentation of material facts.

### **Objections of the 5<sup>th</sup> Respondent**

The 5<sup>th</sup> Respondent contended that the threshing floor is a public threshing floor and also questioned the *locus standi* of the Petitioner.

### **Analysis**

The parties are not at variance on the fact that the impugned order was given against the 4<sup>th</sup> Respondent and not against the three Petitioners. Further, the Petitioners conceded that the 4<sup>th</sup> Respondent co-owner is the husband of the 1<sup>st</sup> Petitioner. The Petitioners have pleaded that the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are also relatives of the 1<sup>st</sup> Petitioner and 4<sup>th</sup> Respondent. It was also not disputed that the 4<sup>th</sup> Respondent, against whom the order was given, has not appealed against the order and in this case the Petitioners have made him a Respondent and not a Petitioner. It is observed by this Court that upon inquiry, the Petitioners were not in a position to explain their action of making the person against whom the order was given a Respondent rather than a Petitioner.

The three Petitioners are co-owners of the paddy land which is depicted in Deed No. 1941 marked as P1. There was no dispute among the parties that there was a threshing

floor within the boundary of the Petitioners' land. It is the contention of the Petitioners that the said threshing floor is a private threshing floor, which is for the exclusive use of the Petitioners. It is alleged by the 5<sup>th</sup> Respondent that the 4<sup>th</sup> Respondent had obstructed the usage of threshing floor for himself and the other cultivators. Accordingly, the 5<sup>th</sup> Respondent being aggrieved by the said act has complained to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The said complaint is against the 4<sup>th</sup> Respondent. However, the parties had not tendered the initial complaint to this Court but all parties conceded that there was a complaint and pursuant to the complaint, an inquiry had commenced.

### **The inquiry**

The Petitioners alleged that the inquiry was conducted in violation of rules of natural justice and a fair hearing was not afforded to the Petitioners. As per the documents marked as P3, P4 and P5, the Complainant in this instance is the 5<sup>th</sup> Respondent, while the Respondent to the said complaint is the 4<sup>th</sup> Respondent, who is a co-owner of the land. It was the contention of the 5<sup>th</sup> Respondent that a complaint was made against the 4<sup>th</sup> Respondent as it was his actions that obstructed the usage of the threshing floor for the cultivators. However, it appears as per the documents stated above, that the 4<sup>th</sup> and 5<sup>th</sup> Respondents had been notified and had taken part in the inquiry. It is also pertinent to note that the Petitioners have failed to tender to this Court the entire set of proceedings of the inquiry conducted by the inquiring officer.

### **Violation of rules of natural justice**

The Petitioner's main contention for impugning the order marked P6 was that it violated the rules of natural justice and a fair hearing was not afforded to the Petitioners. At this stage, it is pertinent to observe that the said hearing had commenced under section 90(1) of the Agrarian Development Act, No.46 of 2000 (as amended) (herein after sometimes referred to as the 'Act'). The Petitioner's further argued that when there are co-owners, an inquiry pertaining to the paddy field should be conducted after issuing notices to all the Petitioners. It is apparent that under P3, P4 and P5, the Petitioners have not been informed of the inquiry.

### **Inquiry pursuant to section 90(1) of the Act**

However, upon a careful consideration of section 90(1), it is observed that the inquiry pursuant to the section commences when a person interferes with or attempts to interfere

with threshing rights, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier. Essentially it is a dispute between the cultivator and the obstructor. As per the submissions of the parties, it is clear that the threshing rights of the 5<sup>th</sup> Respondent had been violated only by the 4<sup>th</sup> Respondent. Hence, he had complained against the 4<sup>th</sup> Respondent. It is pertinent to note for the reasons best known to the Petitioners they have not tendered to Court the complaint against the 4<sup>th</sup> Respondent or the proceedings of the inquiry.

The inquiry under section 90(1), does not extend to ascertain the co-owners of a land. The Commissioner in an inquiry under section 90 is bound to inquire into a complaint and if he is satisfied that there is an interference or attempted interference which would result in damage of crops or loss of livestock, he is entitled to make an order giving directions under the Act. For clarity let me now consider the relevant section of the Act. The said section 90(1) reads as follows:

*“Section 90*

*(1) Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner General after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order on such person cultivator or occupier requiring him to comply with such directions as may be specified in such order necessary for the protection of such rights :*

*Provided that an order under this section shall not be made for the eviction of any person from such agricultural land :*

*Provided further that an order issued under subsection (1) shall not prejudice the right title or interest of such person, cultivator or occupier to such land, crop or livestock in respect of which such order is made.”(emphasis added)*

Keeping this in mind, let me now consider the allegations made by the Petitioners, that they were not afforded a fair hearing. The documents marked as P3, P4 and P5 clearly state that an inquiry had commenced pertaining to the complaint of the 5<sup>th</sup> Respondent and all parties are informed to be present at the inquiry with documentary evidence or with witnesses who can give oral evidence. The 4<sup>th</sup> Respondent who is a co-owner of the land has taken part in the inquiry. If it was the contention that the other three co-owners should be heard, the 4<sup>th</sup> Respondent who is the husband of the 1<sup>st</sup> Petitioner should have made an application to the inquiring officer to make them a party to the

inquiry. However, there were no documents tendered to Court to indicate that the 4<sup>th</sup> Respondent had made such an application and whether such application was refused or allowed. As per the caption to the Petition, the 1<sup>st</sup> Petitioner and the 4<sup>th</sup> Respondent both have the same address. In the circumstances it would be highly improbable for the 1<sup>st</sup> Petitioner, who is the wife of the 4<sup>th</sup> Respondent to have been unaware of the inquiry. It is also pertinent to note that as per paragraph 2 of the Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are also relatives of the 1<sup>st</sup> Petitioner and 4<sup>th</sup> Respondent. Further, no evidence was tendered to demonstrate that the 1<sup>st</sup> Petitioner had even attempted to intervene at the inquiry.

It is also pertinent to note that the 4<sup>th</sup> Respondent was at liberty to produce the Deed which demonstrates that it is a co-owned land and to also call the other three co-owners who are the Petitioners to give evidence, which the Counsel for the Petitioners have conceded has not happened. The document marked P5 demonstrates that the notice has been copied to witnesses whom the parties are going to call. It appears that the names of the three Petitioners were not present on the list. Further as per the submissions, it was due to the 4<sup>th</sup> Respondent not calling the other three co-owners to give evidence at the inquiry. The Petitioners failed to give any explanation as to why he did not think it fit to call the other three co-owners as witnesses, especially his wife who is the 1<sup>st</sup> Petitioner. Subsequent to the inquiry there had been an inspection of the disputed premises. Upon inquiry, the Counsel for the Petitioners as well as the 5<sup>th</sup> Respondent conceded that the inspection was done with the agreement and consent of the Complainant and Respondent to the inquiry, who are the 4<sup>th</sup> and 5<sup>th</sup> Respondents in this Writ Application. The learned Counsel for the Petitioners brought to the Court's attention P7, whereby the 4<sup>th</sup> Respondent has written to the Commissioner General of Agrarian Development making an allegation against the inquiring officer who inspected the premises, the disputed land. In supporting his application, the Counsel for the Petitioners conceded that the 1<sup>st</sup> Petitioner who is his wife had taken part in the inspection visit. It was contended that the inquiring officer had been rude to her. This had been denied by the Counsel appearing for the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents.

In the absence of the proceedings of the inquiry, the Court is not in a position to ascertain the correctness of the letter P7. In any event, the allegation made in P7 becomes a disputed fact as the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents deny such an incident occurring. Further, this Court has also considered the document P8, where the Commissioner General of Agrarian Development had called for a report on the said allegation. None of the parties to this case have appraised this Court the outcomes of the said letter or if a report had been tendered pursuant to P8. Leaving it as it may, considering all the facts as stated above, this Court is of the view that the 1<sup>st</sup> Petitioner, being the wife of the 4<sup>th</sup> Respondent and taking part in the inspection, now cannot allege that she was not afforded a fair hearing. This Court is also of the view that if the 4<sup>th</sup> Respondent has not

disclosed the Petitioners as the co-owners, then 1<sup>st</sup> to the 3<sup>rd</sup> Respondents would not have been in a position to issue notice on them. In any event, as stated elsewhere, this inquiry is an inquiry pertaining to the obstruction or interference of cultivation rights of an owner cultivator or an occupier. There was no evidence tendered before this Court to demonstrate that the Petitioners have interfered with the cultivation rights of the 5<sup>th</sup> Respondent. The allegation before the inquiring officer was that the 4<sup>th</sup> Respondent interfered with the rights of the 5<sup>th</sup> Respondent. Hence the complaint was only against the 4<sup>th</sup> Respondent and the resulting inquiry between the 5<sup>th</sup> Respondent and the 4<sup>th</sup> Respondent.

Hence in my view, within the meaning of section 90(1) the necessary parties to the inquiry in the case before me are the 4<sup>th</sup> and 5<sup>th</sup> Respondents who were the obstructer and the cultivator whose rights were allegedly interfered with. Considering all these facts in my view, the Petitioners contention that they had been deprived of a fair hearing and violation of natural justice is not tenable.

This brings me to the next contention of the Petitioners that the said order is bad in law for the reasons stated in paragraph 11 of the Petition.

### **Was the threshing floor a private threshing floor?**

The Petitioners contended that the disputed threshing floor is a private threshing floor and only the Petitioners have a right to use it. This was vehemently denied by the Respondents and in paragraphs 11 and 12 of their Petition, the Petitioners have further pleaded that the 5<sup>th</sup> Respondent had never used this threshing floor which was denied by the 5<sup>th</sup> Respondent. The Petitioners have obtained title to the land through the Deed marked as P1. In order to obtain a better understanding, let me now consider the said Deed. In considering P1, the Title Deed through which the Petitioners claim title, there is no mention of a private threshing floor within the boundaries stipulated in the Schedule to the Deed. Further the document marked as P2, which is a plan of the land, does not depict a private threshing floor. However, it appears that the Petitioners had obtained title to the said land only on 18.08.2021. As submitted, prior to the said date the land has been cultivated by the Grantors of the said Deed. It was the contention of the 5<sup>th</sup> Respondent that the interference and obstruction by the 4<sup>th</sup> Respondent had commenced only after August 2021. Hence in November 2021, the 5<sup>th</sup> Respondent had complained to the Deputy Commissioner General of Agrarian Development's Office. In the absence of any reference to a private threshing floor in P1 and P2 and in the absence of proceedings of the inquiry, the only conclusion the Court can arrive at is that

the Petitioners have failed to establish that this disputed threshing floor is a private threshing floor.

Contradicting the Petitioners' version, the 5<sup>th</sup> Respondent had marked his Title Deed 5R3 where he stated that he had been cultivating the land from 2009 and in support of the contention that the threshing floor was not a private threshing floor but in fact, a public threshing floor, the 5<sup>th</sup> Respondent has submitted document 5R9 which is a copy of the register of private and public threshing floors. This document was certified by the Agrarian Development Officer of the relevant Agrarian Development Office. The said register does not demonstrate the said threshing floor to be a private threshing floor. This Court has also considered the document 5R10 which is a letter whereby the cultivators had complained to the Agrarian Services Commissioner, Gatambe, Peradeniya and bears the date 19.02.2022. By the said letter the cultivators have informed that the threshing floor in question has been used for generations as a common threshing floor. This document was not objected to by the Petitioners before this Court.

At this stage, let me revert once again to the order marked as P6. The inquiring officer after inspection in his now impugned order has clearly come to the conclusion that the said threshing floor was used by the 5<sup>th</sup> Respondent and other cultivators. Further, after inspection he has come to the conclusion that the 4<sup>th</sup> Respondent had interfered with the rights of the cultivators to use the threshing floor and their right of removing agricultural produce. Hence, the contention of the Petitioners that the said threshing floor is a private threshing floor is not tenable.

### **Misrepresentation and suppression of facts**

In view of the plethora of evidence tendered to this Court militating against the Petitioners contention of having a private threshing floor, and the Petitioners themselves being unable to tender any independent and documentary material to contradict the said finding I am unable to agree with the contention that the inquiring officer's finding pertaining to the threshing floor is bad in law.

In view of the evidence tendered to this Court and in view of the findings of the inquiring officer, it is observed by the Court that by the pleadings in paragraphs 11 and 12 of the Petition, the Petitioners have attempted to misrepresent material facts to this Court, namely in their attempt to state that the threshing floor is a private threshing floor. All the evidence contradicts the Petitioners' version. Hence, this Court holds that alleging that the threshing floor is private without any material to substantiate the said



contention, the Petitioner has attempted to misrepresent facts to this Court. Accordingly in my view, the Petitioners have failed to invoke the jurisdiction of this Court with clean hands. It is trite law that breach of *uberrima fides*, failure to come with clean hands and misrepresentation of facts disentitles the Petitioners from the relief sought.

Basnayake J. in the case of *Fonseka v Lt. General Jagath Jayasuriya and five others* 2011 (2) SLR 372 stated that,

*“A petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to court, bare every material fact so that the decision of court is not wrongly invoked or exercised.”*

In the same case, Saleem J. further held,

*“material facts are those which are material for the judge to know as dealing with the application as made, materiality is to be decided by court and not by the assessment of the applicant or his legal representatives.”*

In view of the above case law, the Petitioners have disentitled themselves from the relief sought.

### **Locus standi of the Petitioners**

As stated above, the dispute referred under section 90(1) of the Act to the Commissioner General of Agrarian Development, resulted in the impugned order P6 being made against the 4<sup>th</sup> Respondent. However, the 4<sup>th</sup> Respondent had not canvassed the said order for reasons best known to him. As far as the said order is concerned the said order does not affect the title of the land. Proviso to section 90(1) clearly states

*“provided further that an order issued under subsection 1 shall not prejudice the rights, title or interest of such person’s cultivator or occupier to such land, crop or livestock in respect of such order being made.”*

Further, the said order is operative only pertaining to the person against whom the order is made. This is amply demonstrated in section 90(3).

*“Section 90*

...

*(3) An order under subsection (1) shall be binding on the person in respect of whom it is made until set aside by a court of competent jurisdiction.”*

Hence in my view, in as much as the effect of impugned order P6 is concerned the Petitioners have failed to demonstrate that they have *locus standi* to canvas the said order.

### **Have the Petitioners established the grounds to impugned order P6?**

The Petitioners have failed to demonstrate how the impugned order P6 is illegal, *ultra vires*, arbitrary or procedurally flawed. Nor have they been able to demonstrate or plead any grounds to demonstrate how a failure to uphold the Petitioners’ legitimate expectation have occurred. Especially, in view of the fact that the impugned order is not dealing with the title of the Petitioners.

### **Conclusion**

Accordingly, in considering all the above stated facts and for the above stated reasons in my view, the Petitioners have failed to demonstrate a *prima facie* case that warrants the intervention of this Court. Therefore, I refuse to issue formal notice and proceed to dismiss this Application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**