

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

*In the matter of an Application for  
mandates in the nature of writ of  
Certiorari and Mandamus under  
and in terms of Article 154(P)(4)(b)  
of the Constitution.*

**CA Case No:CA(PHC)133/2010**

Writ Application No:

HCCA 042010 (W)

Jayasundara Mudiyansele  
Mallika Gunarathne alias  
Jayasundara Mudiyansele  
Mallika Gunarathne Menike,  
Udawewagama, Hengamuwa.

**Petitioner**

**Vs.**

1. Divisional Secretary,  
Divisional Secretary Office,  
Kobeigane.
2. Provincial Land Commissioner,  
Provincial Land Commissioner  
Department (North Western  
Province)  
Provincial Council Com0lex,  
Kurunegala.
3. Mallikaarachchilage Gunasena,  
Udawewagama, Hengamuwa.

## **Respondents**

**Before : P.R. Walgama, J**  
**: L.T.B. Dehideniya, J**

**Council : Appellant is absent and unrepresented.**  
**: Rathnayaka PC for the Respondents.**

**Argued on : 13.05.2016**

**Decided on : 29.08.2016**

CASE-NO- CA (PHC) 133/ 2010- JUDGMENT 29.08.2016

**P.R. Walgama, J**

The Petitioner- Appellant has invited this Court to review and set aside the order of the Learned High Court Judge dated 01.09.2010.

The Petitioner- Appellant moved the Provincial High Court holden at Kurunegala, for an issuance of a mandate in the nature of a writ of Certiorari against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, to quash the decision of the 1<sup>st</sup> Respondent.

The said decisions are marked as P10, P11.

It is contention of the Petitioner- Appellant that she is in possession of the subject land by virtue of State grant, issued under and in terms of Section 19(4) of

the Land Development Ordinance, which is more fully described in the schedule to the said Grant.

It is asserted by the Petitioner-Appellant that she is in possession of Lots 141,145, and a portion of 142 morefully described in the schedule to the said Grant, and depicted in plan No. 1582.

According to the afore said plan Lot No. 142 is a road way, and it is the access to the lots 143 and 129, according to the plan stated above. But it is the position of the Petitioner- Appellant that the occupants of the lots Nos. 129 and 143 have never been used the disputed lot 142 as the access to their lands.

It is asserted by the Petitioner- Appellant that she has used a portion of the said lot 142 for a poultry farm and her predecessors have cultivated coconut on the said disputed land.

It is being noted that the 1<sup>st</sup> Respondent has acted on the complaint made by the 3<sup>rd</sup> Respondent of an obstruction of the above road way by the Petitioner-Appellant.

On the facts stated above it is apparent that Petitioner - Appellant has accepted that the said disputed lot 142 is a lot allocated for a road way and could not be used for any other purpose viz for cultivation or for construction.

The said application was inquired in to by the Learned High Court Judge holden at Kegalle and as he was of the view that Provincial High Court is denuded of jurisdiction to hear and determine as the said application deals with the State Land, had dismissed the application of Petitioner- Appellant.

The subject matter being the Lot No. 142 is vested with the state and by letter marked as P10 the 1<sup>st</sup> Respondent had informed the Petitioner- Appellant to remove the obstruction if any for the use of the same.

Being aggrieved by the said order of the High Court Petitioner- Appellant appeal to this Court to have the said order set aside or vacate.

When this matter was fixed for argument the Appellant was absent and unrepresented, although the notices has been dispatched, indicating the date fixed for argument. Therefore the Court proceeded to hear the argument of Counsel for the Respondent.

In considering the argument set forth by the counsel for the Respondent this court is in agreement of the same as the subject land is a stated land which falls under Schedule 9 of the Thirteenth Amendment to the Constitution.

Section 7 of the High Court of Provinces (Special Provisions) Act No.19 of 1990, vests with the Provincial

High Courts established under Article 154 P (4) of the Constitution with Writ jurisdiction.

Article 154 P(4)(B) of the 13<sup>th</sup> Amendment to the Constitution contemplates the ambit of Writ jurisdiction of the Provincial High Court to deal with the matters set out in the Provincial Council List. The said proposition was dealt in the case of WERAGAMA .VS. EKSATH LANKA WATHU KAMKARU SAMITHIYA AND OTHERS [1994] 1 SLR- 293 and more fully in the case of SOLIMUTTU RASU .VS. THE SUPRINTENDANT STAFFORD ESTATE AND OTHERS (SC. Appeal 21/2013 ) wherein it was decided that the Provincial High Court has no jurisdiction to issue writs under Article 154P (4) in relation to matters concerning State Land.

Hence for the foregoing reasons this Court is of the view that the Appellant's application is devoid of merits and should stand dismissed.

Accordingly we dismissed the appeal subject to a costs of Rs.5000/.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J

I agree.

**JUDGE OF THE COURT OF APPEAL**