

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

In the matter of an application for the grant of a Writ in the nature of *Certiorari* under and in terms of Article 154(P)(4)(b) of the Constitution read together with Act No. 19 of 1990. (as amended)

Case No: CA (PHC) 196/2020

Avissawella High Court No.  
03/2018 Writ

Rajapaksha Pathira Gamage Jayathissa,  
No. 163, Pitumpe North, Padukka.

Petitioner

Vs.

1. Commissioner General of Agrarian Development,  
Department of Agrarian Development,  
No.42, Sir Marcus Fernando Mawatha,  
Colombo 07.
2. Assistant Commissioner of Agrarian Development,  
Agrarian Development District Office,  
No.366, Ven Baddegama Wimalawansa  
Mawatha, Colombo 10.
3. Agrarian Development Officer,  
Padukka.
4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Respondents

AND NOW BETWEEN

Rajapaksha Pathira Gamage Jayathissa,  
No. 163, Pitumpe North, Padukka.

Petitioner-Appellant

Vs.

5. Commissioner General of Agrarian Development,  
Department of Agrarian Development,  
No.42, Sir Marcus Fernando Mawatha,  
Colombo 07.
6. Assistant Commissioner of Agrarian Development,  
Agrarian Development District Office,  
No.366, Ven Baddegama Wimalawansa  
Mawatha, Colombo 10.
7. Agrarian Development Officer,  
Padukka.
8. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondent-Respondents**

Before: **Damith Thotawatte, J.**  
**K.M.S. Dissanayake, J.**

Counsels: Ershan Ariaratne for the Appellant.  
Panchali Witharana, S.C. for the Respondent.

Argued: 30.01.2026

Written submissions  
tendered on: 03.10.2024 by Petitioner – Appellant.  
22.04.2026 by 1<sup>st</sup> to 4<sup>th</sup> Respondents

Judgment Delivered: 29.04.2026

**Thotawatte, J.**

This Appeal has been preferred by the Petitioner–Appellant (hereinafter sometimes referred to as the “Appellant”) against the judgment of the learned High Court Judge of the Provincial High Court of the Western Province holden at Awissawella dated 12.11.2020, whereby the learned High Court Judge dismissed the Writ Application filed by the Appellant challenging the order dated **25.10.2018** made by the Assistant Commissioner for Agrarian Development, (who is described in the Petition of Appeal as the **6<sup>th</sup> Respondent–Respondent**), directing the Appellant to remove certain obstructions alleged to have been placed across a pathway used by farmers to obtain access to a paddy field known as “Hal Aramba”, across the land described as “Hickgahawatta” or “Nakathigewatta”, purportedly in exercise of powers under Section 90(1) of the Agrarian Development Act No. 46 of 2000 (as amended).

### **History and Factual Matrix**

The genesis of the present dispute lies in complaints made by cultivators and users of agricultural lands situated in the relevant locality, who asserted that access to the paddy field known as “Hal Aramba” had been obstructed by the erection of barriers or impediments along a pathway traversing the land described as “Hickgahawatta” or “Nakathigewatta”, which land is claimed to be owned or possessed by the Appellant.

It appears from the material placed before this Court that the said pathway had historically been used by farmers and cultivators to reach the said paddy lands for agricultural purposes including cultivation, transport of produce, and related agrarian activities. The complaints made to the agrarian authorities alleged that the obstruction of this pathway had interfered with cultivation rights and access necessary for agricultural operations.

Upon receipt of the complaints, the relevant Agrarian Development Officers conducted inquiries in terms of the statutory powers vested in them under Section 90(1) of the Agrarian Development Act.

The Appellant having disputed the existence of any legally recognized agricultural roadway across the said land and has contended that the alleged pathway was either non-existent, improperly claimed, or otherwise not entitled to protection under the provisions of the Agrarian Development Act.

At the inquiry conducted by the agrarian authorities, statements were recorded from affected cultivators and other relevant persons, and site inspections were carried out in order to ascertain the existence of the pathway and the nature of the alleged obstruction.

The Assistant Commissioner, having considered the statements of the parties, documentary material, and observations made during the site inspection, formed the view that the obstruction placed by the Appellant interfered with the agricultural right of access to the paddy field and that such interference warranted corrective directions under Section 90(1) of the Act.

It is to be noted that Section 90(1) of the Agrarian Development Act contemplates that, where interference with cultivation rights, including the use of an agricultural road, is established and is likely to result in damage or loss to crops or livestock, the authorized officer may issue directions necessary to protect such agricultural rights.

Following the said inquiry, the Assistant Commissioner for Agrarian Development issued an order dated 25.10.2018, directing the Appellant to remove the obstructions placed across the disputed pathway and to restore access for the use of cultivators of the said paddy lands.

### **Reliefs Sought Before the Provincial High Court**

Being aggrieved by the said administrative order, the Appellant invoked the writ jurisdiction of the Provincial High Court of the Western Province holden at Awissawella, seeking relief primarily in the nature of a writ of *Certiorari* to quash the said order of the Assistant Commissioner, contending *inter alia* that the Assistant Commissioner had acted beyond the scope of statutory authority vested under the Agrarian Development Act and that the decision impugned had been made without proper legal basis and without a proper inquiry, without affording the Appellant an adequate opportunity of being heard.

Upon notice being issued, the Respondents, including the Commissioner-General of Agrarian Development and the Assistant Commissioner for Agrarian Development, filed objections resisting the application and justifying the issuance of the impugned order as a lawful exercise of statutory powers conferred under Section 90(1) of the Agrarian Development Act.

The learned High Court Judge, after hearing the parties and considering the material placed before the Court, delivered judgment on 12.11.2020, dismissing the writ application. The learned High Court Judge thereby declined to grant relief in the nature of *Certiorari* or any other writ and upheld the validity of the order made by the Assistant Commissioner for Agrarian Development.

Aggrieved by the dismissal of the writ application, the Appellant preferred the present Appeal to this Court challenging the correctness in law of the said judgment of the learned High Court Judge. The Appeal has been filed in terms of the appellate jurisdiction conferred on this Court from judgments of the Provincial High Court exercising writ jurisdiction.

### **Reliefs Sought Before the Court of Appeal**

In the present Appeal, the Appellant seeks to set aside the judgment of the learned High Court Judge dated 12.11.2020, and to obtain appellate relief consequent upon the alleged errors in law attributed to the said judgment.

The reliefs sought in the Petition of Appeal include:

1. To set aside and vacate the judgment of the learned High Court Judge of the Provincial High Court of the Western Province holden at Awissawella dated 12.11.2020.
2. To grant relief prayed for in the petition of appeal submitted to the High Court in writ application No. 03/2018 in the High Court of Avissawella .
3. Quash the decision of the 2<sup>nd</sup> Respondent-Respondent dated 25.10.2018.

### **Issues for Determination**

- Powers under Section 90(1) of the Agrarian Development Act
- Scope of judicial review of agrarian administrative orders
- Limits of writ jurisdiction
- Standards governing appellate interference with writ determinations

## Section 90(1) of the Agrarian Development Act

The central statutory provision governing the present dispute is Section 90(1) of the Agrarian Development Act.

That section provides that where a complaint is made by an owner cultivator or occupier that another person is interfering with cultivation rights — including the right to use an agricultural road — the Commissioner-General or an authorized officer, after inquiry, may issue directions as are necessary to protect such rights, if satisfied that such interference would result in damage or loss to crops or livestock.

The statutory language makes it clear that:

1. A complaint of interference must be made.
2. An inquiry must be conducted.
3. The officer must be satisfied that interference would result in damage or loss to crops or livestock.
4. Directions issued are protective in nature.

It is further expressly provided that:

- Such orders **shall not amount to eviction**, and
- Such orders **shall not prejudice substantive title rights**, which remain subject to determination in appropriate civil proceedings.

Thus, the jurisdiction under Section 90(1) is preventive and protective, rather than adjudicatory of proprietary title.

### Nature of Section 90(1) Orders

Judicial authority has consistently recognized that orders made under Section 90(1) are provisional and protective, designed to maintain agricultural access until substantive rights are determined by a competent civil forum.

In *W. A. R. Don Dharmawardena v. D. M. Nalinasekara and others*<sup>1</sup>, the Supreme Court observed that orders made by the Commissioner under Section 90(1) of the Agrarian Development Act are provisional in nature and do not determine the substantive rights of the parties, which remain to be adjudicated by the competent civil court.

Similarly, In *Shehan Calistus Puvinaayagam and others v. Commissioner-General of Agrarian Development and others*<sup>2</sup>, the Court of Appeal held that where the competent authority has conducted a field inspection and inquiry and afforded the parties an opportunity to be heard, the exercise of powers under Section 90 of the Agrarian Development Act cannot be impugned as being in excess of jurisdiction merely because the affected party disputes the factual existence of the alleged agricultural roadway.

## ANALYSIS

### (1) Whether the Assistant Commissioner acted within statutory authority

The material placed before this Court demonstrates that:

- A complaint had been made by affected cultivators.
- A field inquiry had been conducted.
- Statements had been recorded from relevant parties.
- A determination was reached that the obstruction interfered with access to agricultural lands.

The jurisprudence under Section 90 of the Agrarian Development Act consistently recognizes that once a complaint is made and an inquiry conducted, the authorized officer is entitled to issue protective directions where interference with agricultural access is established.

This position is consistent with the decision in *D.P. Mathangaweera v. Chaminda Ekanayake et al.*<sup>3</sup>, where it was affirmed that the purpose of Section 90 is to provide immediate protective relief, and that upon being satisfied after inquiry that interference with cultivation rights exists, the authorized officer is empowered to issue directions necessary to safeguard such rights.

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<sup>1</sup> SC APPEAL 04/2022 Decided on 16.07.2025

<sup>2</sup> C.A. (Writ) No. 339/2009, Decided on 04.07.2014

<sup>3</sup> C.A. (Writ) No. 365/2017, Decided on 31.10.2022

In the present case, the Assistant Commissioner acted after conducting an inquiry and recording findings. There is no material before this Court to demonstrate that the statutory preconditions were not satisfied.

Accordingly, the issuance of the order dated 25.10.2018 cannot be characterized as ultra vires.

## **(2) Whether the learned High Court Judge erred in declining writ relief**

The learned High Court Judge dismissed the writ application upon finding that the decision of the Assistant Commissioner had been made following inquiry and within statutory authority. Where a statutory officer acts within jurisdiction and upon inquiry, writ relief will not issue merely because the affected party disputes factual findings.

The Court in *Shehan Calistus Puvinaiyagam*<sup>4</sup> emphasized that an order under Section 90 made following inspection and recording of statements cannot be impugned on the ground of disagreement with factual conclusions.

Thus, the learned High Court Judge correctly refrained from substituting judicial opinion for administrative findings.

## **(3) Whether disputed title or pathway rights invalidate Section 90 proceedings**

The Appellant appears to have advanced the position that the disputed pathway either did not exist or lacked legal recognition. However, the jurisprudence governing Section 90 of the Agrarian Development Act makes it clear that the proceedings under that provision are not concerned with the adjudication of title or proprietary rights, but are confined to preserving access necessary for agricultural activity until such rights are determined in appropriate civil proceedings.

This principle was explicitly recognized in *W. A. R. Don Dharmawardena v. D. M. Nalinasekara and others*<sup>5</sup>, where the Court affirmed that orders made under Section 90 are provisional in nature and continue to prevail until the substantive rights of the parties are determined by the competent civil court.

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<sup>4</sup> supra

<sup>5</sup> supra

Therefore, disputes relating to title or existence of servitude do not invalidate the exercise of Section 90 powers.

#### **(4) Whether the principles of natural justice were violated**

The material placed before Court indicates:

- Notice was issued
- Parties were heard
- A site inspection was conducted
- Findings were recorded

Such procedural steps satisfy the minimum requirements of natural justice.

In *Shehan Calistus Puvinayagam*<sup>6</sup>, the Court held that where notice and inquiry precede the decision, allegations of denial of natural justice cannot be sustained. There is no evidence in the present case demonstrating procedural unfairness.

#### **(5) Ownership of the land**

The Appellant further contended that the land over which the disputed pathway runs is owned by his wife and not by him, and that accordingly no order could lawfully be made against him; however, this contention does not affect the validity of an order made under Section 90 of the Agrarian Development Act, which may be directed against any person found to be interfering with cultivation access, irrespective of ownership.

#### **Findings**

An order made by the Assistant Commissioner for Agrarian Development under Section 90(1) of the Agrarian Development Act, following an inquiry into a complaint of obstruction to an agricultural roadway and upon affording the affected parties an opportunity to be heard, constitutes a lawful exercise of statutory authority intended to safeguard cultivation rights and is properly regarded as a provisional and protective measure; accordingly, such an order will not be interfered with in writ jurisdiction in the absence of jurisdictional error, procedural impropriety, irrationality, or violation of natural justice, notwithstanding the

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<sup>6</sup> Supra

existence of disputes relating to title or the existence or nature of the pathway, which remain matters for determination before a competent civil court.

## **Conclusion**

For the reasons herein before set out, this Court holds that the judgment of the learned High Court Judge of the Provincial High Court of the Western Province holden at Awissawella dated 12.11.2020 does not disclose any error of law warranting appellate interference. Accordingly, the Appeal is dismissed, the said judgment dated 12.11.2020 is affirmed, and the order dated 25.10.2018 made by the Assistant Commissioner for Agrarian Development shall remain in force, subject to any determination that may be made by a competent civil court in respect of the substantive rights of the parties. Costs to the State are fixed at Rs. 40,000/- payable by the Appellant.

**Judge of the Court of Appeal**

**K.M.S. Dissanayake, J.**

I agree

**Judge of the Court of Appeal**