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 Writs of Certiorari, and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/192/2017

Maxies Company (Private) Limited,
Chilaw Road,
Wennappuwa.

PETITIONER

1. D.V. Bandulasena,
   The Commissioner General of Agrarian Development,
   Department of Agrarian Development,
   No.42, Sir Marcus Fernando Mawatha,
   Colombo 7.

1A. Weerasekara Mudiyanselage
Madduma Bandara Weerasekara,
The Commissioner General of Agrarian Development,
Department of Agrarian Development,
No.42, Sir Marcus Fernando Mawatha,
Colombo 7.

SUBSTITUTED RESPONDENT

2. Wasala Mudiyanselage Nayana Priyadarshini Budhdhadasa,
Assistant Commissioner of Agrarian Development for Chilaw,
Agrarian Development District Office,
Kurunegala Road,
Chilaw.

2A. Senadheera Pathirannehelage Palitha Senadheera,
Assistant Commissioner of Agrarian Development for Chilaw,
Agrarian Development District Office,
Kurunegala Road,
Chilaw.

SUBSTITUTED RESPONDENT

3. W. Ranjith Perera,
Agrarian Development Officer for Nainamadama,
Agrarian Services Centre,
Nainamadama,
Wennappuwa.

4. W.A.D. Fernando,
Agrarian Experiment and ProductionAssistant,
No.491/D, Wennapuwa East.

RESPONDENTS

Before: Dhammika Ganepola, J.

Damith Thotawatte, J.

Counsel:

Shantha Jayawardana, with Duleeka Imbuldeniya, S. Thisera and S. Perera, instructed by H. Chandrakumar De Silva for the Petitioner.

Sumathi Dharmawardane, PC with Pulina Jayasuriya SC for Respondents.

Written Submissions Tendered on:

29.03.2018, 26.10.2018, 29.06.2020 and 20.12.2024 by the Petitioner.

20.04.2018 by the 2nd to 4th Respondents.

19.10.2020 by the 1st to 4th Respondents.

Argued: 02.12.2024

Delivered on: 28.02.2025

Damith Thotawatte, J.

1. The Petitioner Company by Deed No's 2500 and 2502 [respectively dated 05-10-2014 and 09-10-2014 annexed to the Petition as **P1(a)** and **P1(b)**] had bought two allotments of land depicted in the Plan No. 14426 submitted by the Petitioner [annexed to the Petition as **P2(a)**] to build a private retirement home and for the purpose of creating what the Petitioner describes as an ecological crop.

2. On or about 02-08-2015, M. M. N. J. Perera, the Managing Director of the Petitioner Company has received a letter from the 4th Respondent [annexed to the Petition as **P4(a)**] informing him to complete and provide information regarding his "paddy land" using DAD/PLR/1 format on or before 07-08-2015. In response to this Mr. M. M. N. J. Perera has written to the 4th Respondent that he does not own any paddy land.

3. A letter addressed to one Mr. M. M. N. J. Maximus dated 27-08-2015 [annexed to the Petition as **P4(c)**] signed by the 3rd Respondent, had been received by the Petitioner informing that by digging a trench and constructing a road within the "paddy land" depicted by the boundaries given in the said letter, the Petitioner is in violation of the provisions of the Section 32 Subsection (1) of the Agrarian Development Act, No. 46 of 2000.Further, if the land is not restored to its original state within 07 days, an action would be filed against him in the Magistrate Court under the provisions of the said Act.

A public notice informing the same had also been pasted on a wall [annexed to the Petition as **P4(d)**].

4. It is to be noted that the land mentioned in **P4(c)** and **P4(d)** corresponds to the land depicted in Plan No. 14426 of the Petitioner [hereinafter mentioned as "impugned land"] is not disputed.

5. The Projects Manager of the Petitioner Company Mr. Lalith Pathirana, has met with the 3rd Respondent for discussions regarding the issue with the participation of various local farmer associations. As a result of these discussions, the Petitioner has submitted a development proposal [annexed to the Petition as **P5]** to the 2nd Respondent, informing the 2nd Respondent that the impugned land had not been cultivated for over 30 years and at present is unsuitable for paddy cultivation as it had been used to dump coir refuse and dust from the neighboring coir factories. The Petitioner has requested that permission be given to use the land for an alternate agricultural purpose.

6. In addition to the letter **P5**, the Petitioner has submitted a formal development application form [annexed to the Petition as **P6]** dated 21-09-2015, reiterating more or less the same request that was made by **P5.** Both **P5** and **P6** has been submitted on the basis and accepting the fact that the impugned land is "paddy land" that had not been cultivated for over 30 years.

7. It appears that **P6** "development application" had been forwarded to the 3rd Respondent to be approved and thereafter the 3rd Respondent has informed the 2nd Respondent by his letter dated 05-02-2016 [annexed to the Petition as **P11**], that as some agricultural organizations and officials refused to recommend the development application **P6,** it cannot be approved.

8. The Petitioner meanwhile had sought and received permission from Wennappuwa Pradeshiya Sabhawa to build a boundary wall on the impugned land. However, by the letter dated 11-04-2016 [annexed to the Petition as **P12**], this permission has also been suspended by the Secretary of the Wennappuwa Pradeshiya Sabhawa.

9. The 2nd Respondent by her letter dated 22-04-2016 [annexed to the Petition as **P13**] with a copy to the Petitioner, has informed the Secretary of the Wennappuwa Pradeshiya Sabhawa that consequent to a field inquiry it has been revealed that the Petitioner has constructed the boundary wall beyond the limit of the permission given

and is continuing the unauthorized construction. The 2nd Respondent has requested the Pradeshiya Sabhawa to take such steps as necessary to demolish the unauthorized structures.

10. On the same date as **P13**, the 2nd Respondent has written to the Petitioner informing that he has, constructed the boundary wall beyond the limits of the permission given blocking canals supplying water and he is also engaged in illegal land filling. Further, the 2nd Respondent has ordered the Petitioner to take steps to return the land to the original condition within 07 days [letter annexed to the petition as **P14**].

11. On 20-04-2016, the 2nd Respondent filed a case against the Manager Maxies & Company (Pvt) Ltd. In the Magistrate Court of Marawilla under Section 33(3) of the Act, asking for an interim order under Section 33(5) restraining the Petitioner from doing anything other than paddy cultivation within the impugned land. However, on 28-04-2017 the learned Magistrate, accepting a preliminary objection raised on behalf of the Petitioner had dismissed the case on the ground that the "Manager Maxies & Company" named as the Respondent is neither a real person nor a juristic person.

12. On 12-06-2017, the Petitioner has filed this present Application seeking, *inter alia*, the following reliefs:

    i) For a writ in the nature of a writ of Mandamus directing the Respondents to make order that the land depicted in Plan No. 14426 dated 20-09-2016 annexed to the petition as **P2(a)** is not a paddy land as defined in section 101 of the Agrarian Development Act No. 46 of 2000 [as stated in prayer (d) of the Petition].

    ii) For a writ in the nature of a writ of Certiorari quashing the letter dated 27-08-2015 annexed to the petition as **P4(c)** [as stated in prayer (e) of the Petition].

    iii) For a writ in the nature of a writ of Certiorari quashing the letter dated 05-02-2016 annexed to the petition as **P11** [as stated in prayer (f) of the Petition].

    iv) For a writ in the nature of a writ of Certiorari quashing the letter dated 22-04-2016 annexed to the petition as **P13** [as stated in prayer (g) of the Petition].

    v) For a writ in the nature of a writ of Certiorari quashing the letter dated 22-04-2016 annexed to the petition as **P14** [as stated in prayer (h) of the Petition].

13. Considering the main relief prayed for by the Petitioner in prayer (d) it is clear that the relief he is seeking is based on the fact that the impugned land cannot be categorized as a "paddy land" under the definition given in section 101 of the Agrarian Development Act No. 46 of 2000.

The departure from the previous position taken by the Petitioner

14. The Petitioner has submitted **P5** and **P6** on the acceptance that the impugned land is "paddy land" under the definition given in section 101 of the Agrarian Development Act as such unless the Petitioner can give an explanation acceptable to the Court, the Petitioner is estopped from taking a contrary position in this application.

15. It is the position the Petitioner that the Petitioner was "compelled to and/or ordered to and/or directed to and/or misled" [paragraph 18 of the Petition] into making the applications **P5** and **P6** and as such, there was no admission or acceptance by him that the impugned land is paddy land. It appears that the Petitioner is unable to clearly state which act of the Respondents prompted him to take a false position. The Petitioner appears to be uncertain whether he was ordered to act in that manner or was misled in to acting in that manner.

16. The Petitioner has filed an affidavit from Mr. Lalith Pathirana who participated in the discussion with the 2nd Respondent. I have reproduced below averment in paragraph 14 of Mr. Lalith Pathirana's Affidavit [annexed to the Petition as **P7**] referring to this allegation.

> 14 *As stated above, the said Applications were made at the instance of the said officer and in any event, the said applications are based on the fact that the said land is uncultivated paddy land.*

17. Mr. Lalith Pathirana's Affidavit **P7** does not support the allegation that 3rd Respondent or any other Respondent had "compelled to and/or ordered to and/or directed to and/or misled" the Petitioner into admitting the impugned land is "paddy land".

18. On the above grounds, I reject the explanation of the Petitioner and conclude that the Petitioner is estopped from taking a position that the impugned land is not paddy land.

Land not Currently under paddy Cultivation can be Considered Paddy Land

19. Section 101 of the Agrarian Development Act No. 46 0f 2000 defines "Paddy Land" as follows.

> "paddy land" means land which is cultivated with paddy or is prepared for the cultivation of paddy or **which, having at any time previously been cultivated with paddy, is suitable for the cultivation of paddy,** and includes such other land adjoining or appertaining to it as may be used by the cultivator for a threshing floor or for constructing his dwelling house, but does not include chena land or any land, which, with the permission of the Commissioner- General is used for any purpose other than cultivation in accordance with the provisions of this Act, or which is determined by the Commissioner-General not to be paddy land; (*emphasis is mine*)

20. It is clear from this Section that a land that had **previously been cultivated with paddy**, although not cultivated at present but **if suitable for the cultivation of paddy**, is considered "**paddy land"** under the Act.

21. According to Section 28 of the Act, it is the Commissioner-General of Agrarian Development who decides whether a land is paddy land or not.

> 28. (1) The Commissioner-General may decide whether an extent of land is a paddy land.
>
> (2) The Commissioner-General may, for the purpose of making a decision under subsection (1), call for and obtain the observations and information from the Agrarian Development Council within whose area of authority the extent of land is situated, and from the relevant government departments statutory boards and institutions. It shall be the duty of every such government department, statutory board and institution to furnish such observations and information as soon as practicable.

22. It appears that the 1st Respondent, the Commissioner-General of Agrarian Development has a wide discretion when arriving at a determination whether a particular land should be considered a "**paddy land"**. No specific guideline seems to be available as to what particulars should be considered before arriving at the decision. Although the

Commissioner-General could call for observations from various organizations and institutions, the use of the word "may" means it's not mandatory.

23. Even in a situation that there is wide discretion conferred on a public functionary, he is expected to exercise this discretion in fair and a rational manner. The 2nd to 4th Respondents are officers who derive their authority from the 1st Respondent and exercise their authority on behalf of the 1st Respondent.

24. In paragraph 14 of the Respondents objections, it is stated that the 2nd Respondent legally made the determination that the land in issue is a "paddy land" and in paragraph 18, it is stated that 2nd Respondent came to the above decision considering the observations submitted by farmers' organizations, by inspections carried out and other available material.

25. Although the Petitioner expressly challenge the manner in which 2nd Respondent arrived at this decision, the Petitioner has not prayed for a writ of certiorari to quash that decision before asking for a writ of Mandamus.

26. The prayer (e) to (g) of the Petition is requesting the Court to issue writs in the nature of Certiorari to quash the letters P4(c), P11, P13 and P14 or the decisions therein. However, all these letters are consequential to the decision taken that the impugned land is a paddy land. Without quashing that primary decision, none of the relief sought by prayer (e) to (g) can be granted.

<u>The Arguments and material submitted by Petitioner in order to establish that the impugned land is not a paddy land</u>

27. The Petitioner has submitted a scientific Report by Dr. Ananda Tennakoon [annexed to the Petition as **P16(a)**] declaring *inter alia* that, the gradient of the ground, drainage of water and the texture of the soil is unsuitable for paddy cultivation. Further report by Prof. Kapila Goonasekara, has been filed [marked as **P25**] confirming the same.

28. The Petitioner has submitted a map of the Surveyor General dated 1982 marked as **P17A** and **P17B,** which he claims shows the high land as containing a coconut plantation and the low land to be a marsh land. Further, the Petitioner has submitted four Satellite photographs of the land from February 2010 to January 2017 which he claims that it does not show paddy cultivation.

29. According to Section 101 of the Act, even if paddy had been cultivated on a land previously or historically, and that land has since become unsuitable for cultivation of paddy, the land cannot be considered to be paddy land. The purpose of the Petitioner in submitting above material appears to be to establish that,

    a) there could not have been a paddy cultivation on the impugned land;
    b) there had not been a paddy cultivation on the impugned land during the recent past; and
    c) there cannot be any future cultivation of paddy on this land as it is not suitable for such a cultivation.

30. However, the material submitted in support of the above facts are not admitted by the Respondents and, cannot be accepted by the Court without a comprehensive inquiry to ascertain its authenticity as well as the correctness of their conclusions. This Court is unable to conduct such inquiries, and as such, these facts remain in dispute. Based on disputed facts, this Court is unable to come to a finding that the land is unsuitable for cultivation of paddy or not.

31. It is trite law that when the facts are in dispute, a Writ Court will be reluctant to exercise its discretionary power in the exercise of Writ jurisdiction.

    In **Kumudu Akmeemana v. Hatton National Bank & others** (CA writ application No.72/2020) , decided on 30.04.2021 it was held that,

    > "the jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact."

    In the case of **Thajudeen v. Sri Lanka Tea Board & Another** (1981) SLR 471, it was held where the major facts are in dispute and the legal result of the facts are subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.

    The Supreme Court in the case of **Dr. Puvanendran and another v. Premasiri and two others** (2009) 2 SLR 107 held that, "the Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2)

the function that is to be compelled is a public duty with the power to perform such duty."

The preliminary objections

32. As per journal entries on 13-09-2017 on the notice returnable date of this Application, the learned State Counsel appearing for the Respondents has informed that, as the Provincial High Court has concurrent jurisdiction with regards to matters of this nature, there is a "procedure" to send such matters to the Provincial High Court and that he would file some authorities in support of this position by way of a motion.

33. Although no formal objection appears to have been taken, the Court has varyingly considered this submission as a preliminary objection as well as a preliminary issue. The Petitioner has filed two separate written submissions regarding this matter and one written submission has been filed on behalf of the Respondents. Afterwards, this matter had been fixed for "judgment" on 06-12-2018.

34. Considering the submissions, it appears that the parties have never disputed that the Court of Appeal has Jurisdiction to hear this case, only that there is a practice of the Court of Appeal to send such matters to be considered by the Provincial High Court.

35. On 06-12-2018, without delivering a judgment regarding the above issue, the Court had informed parties that the Court will consider the preliminary issue together with the substantive matter. Considering the entire preliminary issue was whether or not it is expedient for the Court of Appeal to consider the substantive matter, this order would be said to have resolved the issue.

36. Perusing the authorities submitted on behalf of the Respondents, I cannot see any compelling reason given for the request to forward this Application to the Provincial Court. It appears that an argument had been developed that the Provincial Court may be better equipped to handle matters of this nature because of their proximity to the issue. Considering the circumstances of this Application, I am of the view that there is no such necessity. On the above considerations I dismiss the request to forward this Application to the Provincial Court.

Availability of a writ of Mandamus

37. The main relief sought by the Petitioner is at prayer (d) of the Petition which is a request for a writ of Mandamus directing the Respondents to make order that the impugned land is not paddy land. Basically, what is being asked for is a determination by the 1st Respondent

38. According to Section 101 of the Act, the Commissioner-General can determine that certain land not to be "paddy land", which means it is possible for the 1st Respondent to determine that the impugned land is not a "paddy land" under the definition given by Agrarian Development Act No. 46 0f 2000. The Act does not specify the process by which the Commissioner-General can arrive at this determination. However, it stands to reason that there should be material before the Commissioner-General in order for him to arrive at this conclusion. There is nothing in the Act preventing the Petitioner from submitting the necessary material to the 1st Respondent and requesting him to reconsider the previous decision.

39. **P24** letter sent to the 2nd Respondent by the attorney of the Petitioner merely orders the 2nd Respondent to inform the Petitioner in writing within five working days, that the impugned land is not a "paddy land". This letter cannot be considered a request to reconsider the previous decision. There is no indication that the Petitioners current position (contention that the impugned land had not been a paddy land and/or is unsuitable for paddy cultivation) or the supporting material had been formally submitted to the Respondents for consideration.

40. Under the provisions of the Agrarian Development Act No. 46 0f 2000 the 1st Respondent is vested with discretion to determine whether a land is a paddy land or not. In Sri Lankan jurisprudence, it is a well-established principle that a writ of mandamus cannot be issued to compel the performance of acts or duties that involve the exercise of discretion by public authorities. This principle has been affirmed in **Selvamani vs Dr. Kumaravelupillai, 2005 2 Sri LR 99**, **Rev. Seruwila Sarankithi and others Vs the Attorney General and others 2004 (1) SLR 365** and **Dheerasena v Post Master and Others, 2008 1 Sri LR 349**.

41. A writ might lie against the manner in which the Respondents has exercised the said discretion, in the event such an application was made. However, in the instance case, no application has been made. As such Respondents cannot be compelled to decide that the impugned land is "paddy land" through a writ of Mandamus.

Based on the circumstances and reasons provided above, I am not inclined to grant any of the reliefs prayed for in the prayer to the Petition.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J.

I agree.

JUDGE OF THE COURT OF APPEAL