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

In the matter of an Application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for an Order in the nature of a Writ of Certiorari

CA (Writ) Application No. 222/2013

Herath Dissanayakalage Ariyasiri,
Indiwinna, Welpalla.

PETITIONER

Vs.

1. Deputy Commissioner of Agrarian Development.

2. W. A. I. Perera,
Asst. Commissioner of Agrarian Development.

3. E.M.L.K. Ekanayake, Former Agrarian Development Officer, Welapalla of "Sethsiri",Kuripoththa, Pothuhera.

4. K.E. Senevirathne,
Asst. Commissioner of Agrarian Development,

1st, 2nd and 4th Respondents at
District Office of Agrarian Development,
Kurunegala.

5. Ilangakoone Mudiyanselage Wijerathne Illangakoone,
No. 08, Indiwinna, Welpalla.

RESPONDENTS

Before:	**Arjuna Obeyesekere, J**
Counsel:	Buddhika Gamage for the Petitioner
	Manohara Jayasinghe, Senior State Counsel for the 1st – 4th Respondents
Written Submissions:	Tendered on behalf of the Petitioner on 24th June 2020
	Tendered on behalf of the 1st – 4th Respondents on 18th June 2020
Decided on:	24th July 2020

Arjuna Obeyesekere, J

The Petitioner states that in 2003, the 5th Respondent had complained to the 1st Respondent that the Petitioner had obstructed the *Indivinna Ahasdiyawela Ela* in the following manner:

> **"මගේ ඉඩමට මායිම්ව පිහිට ඇල මාර්ගය වෙල්පල්ල, ඉඳිවින්න පදින්වි එවි. ඩී ආරියසිරි යන අය විසින් ඇල මාර්ගය අවහිර වන අන්දමින් ඇල වසා දමා තාප්පයක්ද බැඳ, අනවසරයෙන් කොටු කර ගැනීමෙන් මාහට අයත් අක්කර තුනකට ආසන්න කුඹුරු ප්‍රමානයක් හා ඊට පහලින් ඇති කුඹුරු විශාල ප්‍රමානයක් අස්වැද්දීමට නොහැකි තත්වයක් උද්ගතව ඇත."**[1]

The 3rd Respondent, who was the Agrarian Development Officer for Welpalla, had inquired into the said complaint, and arrived at a finding in favour of the 5th Respondent. The Petitioner had thereafter challenged the said decision in the Provincial High Court of Kurunegala, but his application had been rejected for failure to comply with the Court of Appeal (Appellate Procedure) Rules, 1990. The Petitioner had thereafter filed a revision application before this Court – CA/PHC/Rev No. 109/2006. This Court had set aside the judgment of

[1] Vide letter dated 4th March 2009, marked 'X1b'.

the Provincial High Court, as well as that of the 3rd Respondent, on the basis that the provisions of the Agrarian Development Act No. 46 of 2000, as amended (the Act) required the inquiry to be conducted by an Assistant Commissioner of Agrarian Development, whereas the 3rd Respondent was only an Agrarian Development Officer.

By letters dated 4th March 2009 and 28th October 2009, marked '**X1a**' and '**X1b**' respectively, the 5th Respondent had requested the 1st Respondent to re-inquire into the complaint made by him in 2003 regarding the obstruction of the said *Ela* by the Petitioner.

The power to inquire into complaints relating to obstruction of irrigation channels, water courses etc is contained in Section 83(1) of the Act, which reads as follows:

> *"The Commissioner-General may, if it appears to him that any person has:*
>
> *(a) blocked up, obstructed or encroached upon or caused to be blocked up, obstructed or encroached upon, damaged or caused to be damaged, any irrigation channel, water course, bund, bank, reservation tank, dam, tank-reach or irrigation reserve: or*
>
> *(b) wilfully or maliciously caused the waste of water conserved in any irrigation work: or*
>
> *(c) without the prior written approval of the Commissioner-General carried out any cultivation in, or removed earth from or caused earth to be removed from, a tank, canal within the catchment area or from a minor irrigation channel, water course, bund, bank, reservation tank, dam, tank-reach or irrigation reserve,*

make an order requiring such person to take such remedial measures as are specified in the order."

The 2nd Respondent, an Assistant Commissioner of Agrarian Development had accordingly conducted an inquiry with the participation of the Petitioner and the 5th Respondent. Having afforded all parties an opportunity of presenting evidence, and filing written submissions, the 2nd Respondent, by an Order dated 31st May 2013, marked '**X6**' had held that the Petitioner had obstructed the *Ela*. The said decision had been communicated by the 2nd Respondent to the Petitioner and the 5th Respondent, by letter dated 31st May 2013 marked '**X7**'. The Petitioner had also been directed by '**X7**' to remove the obstruction caused to the said *Ela*.

Dissatisfied by '**X6**', the Petitioner had filed this application, seeking a Writ of Certiorari to quash:

(a) the Order made by the 2nd Respondent, marked '**X6**';

(b) the proceedings of the Inquiry conducted by the 2nd Respondent, pursuant to which the above decision was arrived at.

Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**[2] has identified three grounds upon which administrative action is subject to control by judicial review, namely 'illegality', 'irrationality' and 'procedural impropriety'. The Petitioner is not complaining that the Order '**X6**' is illegal, nor is the Petitioner complaining that the 2nd Respondent has not followed the proper procedure. The complaint of the Petitioner is that the 2nd Respondent

[2] 1985 AC 374.

has acted on extraneous considerations and that the findings of the 2nd Respondent are not supported by the evidence led before the 2nd Respondent. However, neither the petition nor the written submissions of the Petitioner contain any elaboration of the above complaints.

This Court is mindful that in an application for judicial review, this Court is exercising its Writ jurisdiction as opposed to its Appellate jurisdiction. This distinction has been referred to in **Administrative Law** by Wade and Forsyth[3] in the following manner:

> "*The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful'?*"

As Lord Brightman stated in the House of Lords in **Chief Constable of North Wales Police v Evans**[4], applications for judicial review are often misconceived:

> "*Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power..... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made*."

[3] H.W.R. Wade and C.F. Forsyth, Administrative Law (11th Edition), Oxford University at page 26.
[4] [1982] 1 WLR 1155 at 1174.

The only issue that this Court is required to consider is whether the decision of the 2nd Respondent that the Petitioner has obstructed the said *Ela* is supported by the material that was placed before the 2nd Respondent. This Court, having examined the evidence that was led before the 2nd Respondent, notes the following facts:

a) The 5th Respondent had purchased a property situated in Welpalla, Indivinna in extent of 4A 0R 2P.

b) The said property is depicted as Lot Nos. 4, 5 and 6 of Plan No. 201/1983 dated 27th October 1983.

c) While Lot Nos. 4 and 5 are contiguous lots of land, Lot No. 5 is a paddy field.

d) Situated on the northern boundary of Lot Nos. 4 and 5 is Lot Nos. 2 and 3.

e) Situated between Lot No. 4 and Lot No. 2 is the disputed *Ela*. Thus, the said *Ela* separated the Lot No. 4 owned by the 5th Respondent from Lot No. 2.

f) It was the position of the 5th Respondent that he uses water from the said *Ela* to cultivate his paddy land – Lot No. 5.

g) The complaint of the 5th Respondent was that in 2002, the Petitioner, whose land is situated to the north of Lot No.4, had filled the *Ela* with earth and obstructed the *Ela* that runs between Lot Nos. 2 and 4 and brings water to Lot No. 5, and thereafter fenced his land, and erected a wall.

h) The Petitioner had in fact complained that during the rainy season, the said *Ela* overflows on to his land, and pollutes his well, which is situated adjacent to the *Ela.*

i) The 5th Respondent is alleging that in erecting a fence, the Petitioner had encroached onto his land.

j) The 5th Respondent had thereafter instituted Case No. 13903/L in the District Court of Kuliyapitiya, seeking *inter alia* a declaration that the 5th Respondent is the owner of the land that he is alleging the Petitioner has encroached.

k) Plan No. 3913 had been prepared in August 2004 pursuant to a commission issued in the said case depicting the said Lot Nos. 4, 5 and 6 in Plan No. 201/1983, as Lot Nos. 1, 2, 3 and 4.

l) Lot No. 4 in Plan No. 3913 is part of Lot No. 4 in Plan No. 201/1983.

m) However, the disputed *Ela* which is depicted to the North of Lot No. 4 in Plan No. 201/1983 is not depicted in Plan No. 3913, as an *Ela* did not exist by 2004, due to the filling of the *Ela*.

It is on the above material that the 2nd Respondent had concluded that there existed an *Ela* between Lot Nos. 2 and 4 of Plan No. 201/1983, and that by the absence of the Ela in Plan No. 3913 prepared in 2004, it was clear that the said *Ela* had been filled with earth by the Petitioner, as alleged by the 5th Respondent. This Court is therefore satisfied that the decision of the 2nd Respondent marked '**X6**' is supported by the material that was placed before

the 2nd Respondent. It is not a decision which is *so absurd that no sensible person could ever dream that it lay within the powers of the authority,*[5]

There is one other matter that this Court wishes to advert to. The Petitioner had annexed to his written submissions a copy of the judgment delivered by the learned District Judge of Kuliyapitiya in the aforementioned case, where he too, had arrived at a finding similar to '**X6**' with regard to the obstruction of the *Ela.*

In the above circumstances, this Court does not see any legal basis to grant the relief prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

[5] Vide Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B. 223 at pages 229 - 230.