

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

**CA Writ 47/2011**

J. Rummy Packirdeen  
No: 15/38,  
Zaharaz Garden,  
Circular Road,  
Badulla.

**Appellant**

**Vs.**

D.M Thilakarathna  
Agrarian Development Officer,  
Agrarian Service Centre,  
Rambukpotha,  
Badulla.

And 02 others

**Respondents**

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for a mandate  
in the nature of a writ of certiorari under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application No. 47/2011**

**BEFORE** : S. Sriskandarajah J. (P/CA)

Deepali Wijesundera J.

**COUNSEL** : P. Dayaratne P.C with Nadeeka  
K. Arachchi and D.N. Dayaratne  
for the Petitioners

H.P Ekanayake S.C for the  
Respondent.

**ARGUED ON** : 29<sup>th</sup> March, 2012.

**DECIDED ON** : 18th May, 2012

**Deepali Wijesundera J.**

The petitioner has filed this application against the respondents for  
a writ of certiorari to quash the order of the 1<sup>st</sup> respondent dated  
25/08/2009 and also has moved for a stay order to stay the proceedings  
of case No. 10774 in the Magistrates Court of Badulla.

The petitioner has become the owner of a land described as "Paula Kumbura" by deed No 307 (marked as **P1**) dated 23/12/2000 which land is shown as Lot 1 in plan 5376. The said land is depicted as low lands or paddy fields and the petitioner has made an application to fill the land to construct a house to the Commissioner of Agrarian Services under section 62 (1) of the Agrarian Services Act No. 58 of 1979, amended by Act No. 4 of 1991 (marked as **P4**). The Assistant Commissioner of Agrarian Service has informed the Deputy Director of Urban Development Authority Uva Province that he has no objection to the petitioner's application by letter dated 29/05/2002 marked as **P5**. The petitioner has filled the land and built a house and has also got electricity to the partly built house.

An order dated 25/08/2009 made under sec. 32 (1) of the Agrarian Development Act No. 46 of 2000 was affixed on to the petitioners premises directing him to stop the unlawful construction and filling of his land which had been described in the said notice as a paddy field, (Marked as **P14**) by the 1<sup>st</sup> respondent.

The 1<sup>st</sup> respondent has also made a complaint against the petitioner under sec 32 (5) of the said Act at the Badulla Police Station (marked as **P16**) on this complaint the police have arrested 4 persons who were carrying out construction work at the said land. A case was filed in the Magistrates Court of Badulla (case No. 10774 marked as **P18**). The petitioner has made this application to stay further proceedings in this case and also to quash the order dated 25/08/2009 by the 1<sup>st</sup> respondent.

The counsel for the petitioner argued that the said land which was described as a low land was in fact a high land and that he made an application to the Commissioner of Agrarian Services under the relevant Act and asked for permission to fill the land. He further stated that the Badulla Municipal Council and the Urban Development Authority have registered the petitioner's house and issued an assessment number and provided electricity. The petitioner submitted that the order of the 1<sup>st</sup> respondent should be quashed.

The respondents stated that the land related to this case is a paddy land and the fact that the land was not listed in the paddy land register does not warrant the petitioner to fill up the said paddy land. The respondents further submitted that the authority which has the power to decide whether a land is a high land or a paddy land is the Commissioner General of Agrarian Development.

The 1<sup>st</sup> respondent stated that the order seeking to be quashed was written by him after finding out on a site visit that the petitioner has started building an unauthorized construction in the paddy land in question (marked as **R4** and **R4a**). The respondents stated since the petitioner did not act according to the notice served on him they had to act under sections 32 (5), 32 (6) and 32 (7) on the powers vested on them.

The respondents argued that **P14** which is a valid legal document, issued within the authority of the respondents the petitioner has no ground to obtain a writ of certiorari from this court.

On perusal of deed No. 307 marked as **P1**, and the documents produced as **P4** and **P5** it is very clear that the land in issue is a paddy land. Although the petitioner has sought permission from the Commissioner of Agrarian Services to fill this land he has not waited for his approval to fill and build on this land. The documents issued by the Municipal Council and the Urban Development Authority do not apply to the issue in this case.

Section 28 (1) of the Agrarian Development Act No. 46 of 2000 reads as follows:

*“The Commissioner General may decide whether an extent of land is a paddy land”*

The authority which has the power to decide whether a land is a high land or a paddy field is the Commissioner General of Agrarian Development.

Documents **R2** and **R3** marked by the respondent's sets out the procedure to be followed when paddy land is used for other purposes. No where it is stated in the documents produced by the petitioner that he was granted permission to fill the paddy land.

The 1<sup>st</sup> respondent after it was brought to his notice that the petitioner has filled a paddy land has acted under the said Act and issued the notice marked P14. Since the petitioner did not act according to the instructions given in the said notice marked P14 the respondent was compelled to act under sec. 32 (5) of the said Act Section 32 (1) (a) (c), 32 (3) , 32 (5) and 32 (7) reads as:

**32 (1):** *Any person who, without obtaining written permission from the Commissioner-General*

**-a-:** *fills up an extent of paddy land with soil or other material or attempts to fill up such extent of paddy land;*

**-c-:** *constructs any structure within any extent of paddy land or does any act in furtherance of such purpose;*

*shall be guilty of an offence under this Act.*

**32 (3):** *When any person commits an offence under subsection (1) the Commissioner-General or an officer appointed in accordance with subsection (2) of section 38 shall forthwith issue notice to all such persons involved, to abstain from committing such offence. The exhibition of such notice in or on a prominent place in such extent of paddy land shall be deemed to be service on all such persons.*

**32 (5):** *Where an offence under subsection (1) is being committed by any person or when any course of action is taken to do so, an officer appointed under subsection (2) of section 38 shall complain to the officer in charge of the police station of the area where such extent of paddy land is situated.*

**32 (7):** *All such persons as are taken into custody under subsection (6) and any implement, instrument, machine, vehicle or any other article or document shall forthwith be produced before the Magistrate's Court.*

For the aforesaid reasons I decide that the respondents have acted in bona fide according to law on the powers vested in them and dismiss the petitioner's application with costs. Fixed at Rs. 10,000/=

**JUDGE OF THE COURT OF APPEAL.**

**S.Sriskandarajah J**

I agree.

**PRESIDENT OF THE COURT OF APPEAL**