

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

In the matter of an application for  
mandate in the nature of Writ of  
Certiorari under and in terms of  
Article 140 of the Constitution.

CA Writ Application No: 300/2010

Weerasuriya Mudiyansele  
Kalyanaseeli Premalatha,  
Hapuwita, Udagama,  
Moronthota.

**Petitioner**

Vs.

1. W.W.M. Dharmadasa,  
Assistant Commissioner of  
Agrarian Development, Office of  
the Assistant Commissioner Of the  
Agrarian Development, Kegalle.
2. Divisional Officer of Agrarian  
Development, Agrarian  
Development  
Divisional Office, Kegalle.

3. Commissioner of Agrarian  
Development, Office of the  
Commissioner Agrarian  
Development,  
No.537, Sir Marcus Fernando  
Mawatha, Colombo 07.
  
4. W.A. Dayarathne,  
Hapuwita-Udagama,  
Moronthota.
  
5. P. Sirisoma,  
Hapuwita-Udagama,  
Moronthota.
  
6. S.A. Dharmadasa,  
Hapuwita-Udagama,  
Moronthota.
  
7. P.M.P.G. Karunawanthi  
Hapuwita-Udagama,  
Moronthota.
  
8. K. Dayarathne,  
Hapuwita-Udagama,  
Moronthota.

**Respondents.**

BEFORE : S. SRISKANDARAJAH, J (P/CA)

COUNSEL : Upul Kumarapperuma with Ms.Sashika Ariyadasa,  
for the Petitioners,  
Yuresha de Silva, SC  
for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
D.M.G.Disanayake  
for the 4<sup>th</sup> to 8<sup>th</sup> Respondents

Argued on : 06.03.2012

Decided on : 15.06.2012

**S.Sriskandarajah.J,**

The Petitioner submitted that she is the owner of land more fully described in the schedule to the deed bearing No.36672 dated 2<sup>nd</sup> of October 1979, attested by S.W. Ariyaratna, Notary Public, which is in extent of 2 Acres 2 Roods and 12.5 perches. The Petitioner further submitted that a paddy field is situated along the northern boundary of her land and the said paddy land is now cultivated by several tenant cultivators, including the 4<sup>th</sup> to 8<sup>th</sup> Respondents. The Petitioner submitted that on the 7<sup>th</sup> of September 2009, several villagers, including the 4<sup>th</sup> to 8<sup>th</sup> Respondents forcibly entered the Petitioner's land and started to cut down trees along the northern boundary of the said land and commenced constructing a road along the northern boundary towards the threshing floor that was situated in the northern boundary of the Petitioner's land. On the 10<sup>th</sup> of September 2009, the 6<sup>th</sup> Respondent had made a complaint to the Divisional Office of the Agrarian Development, Kegalle, alleging that the Petitioner has obstructed the use of an agricultural road to the threshing floor and thereby violating

their rights. Based on this complaint the Assistant Commissioner, Agrarian Development, the 1<sup>st</sup> Respondent, held an inquiry. In the inquiry the Petitioner was given an opportunity to produce all the relevant documents, and the 4<sup>th</sup> to 8<sup>th</sup> Respondents were also given an opportunity to prove that there was a road in existence along the northern boundary of the Petitioner's land to the said threshing floor. The said inquiry proceedings were concluded on 23<sup>rd</sup> November 2009, and the parties were given an opportunity to file written submissions. Thereafter an inspection was carried out by the 1<sup>st</sup> Respondent to inspect the land in question. After the said inspection, by letter dated 10<sup>th</sup> March 2010, the 1<sup>st</sup> Respondent, in terms of Section 90(1) of the Agrarian Development Act No.46 of 2000, made a decision and communicated to the Petitioner not to obstruct the 4<sup>th</sup> to the 8<sup>th</sup> Respondents' threshing rights, right of using the threshing floor and the right to remove the harvest, using the agricultural road over the Petitioner's land.

The Petitioner challenged the aforesaid decision in this application as ultra vires the powers of the 1<sup>st</sup> Respondent and it is arbitrary and illegal. The Petitioner in this application took up the position that an inquiry in terms of Section 90(1) of the Agrarian Development Act No.46 of 2000 can only be held in respect of a denial of established rights. The Petitioner's position is that the said Respondents have no right whatsoever to the said road access to the threshing floor and, therefore, the decision of the 1<sup>st</sup> Respondent is ultra vires the powers of the 1<sup>st</sup> Respondent. The 4<sup>th</sup> to the 8<sup>th</sup> Respondents took up the position that the said threshing floor is the only place which was used by the 4<sup>th</sup> to 8<sup>th</sup> Respondents, and the rest of the farmers who cultivate the paddy field situated to the north of the Petitioner's land, and that these Respondents, along with several other families have been using this threshing floor for a long period of time, from the days of their ancestors. They also submitted that one Saminda Godigamuwa, who is the owner of the paddy field and the predecessor in title to the high land claimed by the Petitioner were members of the same family and that there was no dispute as regards the access road in the past until the Petitioner purchased the

highland. The said 4<sup>th</sup> to the 8<sup>th</sup> Respondents submitted to this court a letter dated 8/09/2010, signed by the Agricultural Research and Production Assistant of Meedeniya to the Divisional Officer of the Agrarian Services, Paragammana, with a sketch depicting the situation of the paddy field and the highland claimed by the Petitioner. These facts were considered by the 1<sup>st</sup> Respondent in the inquiry and has made the said decision as the Inquiring Officer, the 1<sup>st</sup> Respondent has not only heard evidence and considered documents, but had visited the scene and made observations. The decision arrived at by the 1<sup>st</sup> Respondent is based on questions of fact and hence, this Court cannot question the decision of the 1<sup>st</sup> Respondent. As the 1<sup>st</sup> Respondent has acted within the powers conferred on him, and has arrived at the said decision after giving an opportunity to the persons affected, this Court has no reason to interfere with the said decision of the 1<sup>st</sup> Respondent and, therefore, I dismiss this application without cost.

President Court of Appeal