

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

In the matter of an Application for Writ
of Prohibition under Article 140 of the
Constitution.

M.B.N. Peiris nee Perera,
No.58, Gomis Mawatha,
Kelaniya.

Petitioner

C.A. Writ Application No.536/2011

Vs.

1. Wattala Pradeshiya Sabha,
Wattala.

Respondent

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

COUNSEL : Jacob Joseph,
for the Petitioner.
Respondent absent and unrepresented

Argued on : 28.03.2013

Written Submission : 09.05.2013 (Petitioner)

Judgment : 06.06.2013

S.Sriskandarajah,I

The Petitioner submitted that she is the owner of a land described in Schedule A and B of this petition. The Petitioner's land is situated at No.27, 1st Lane, Palliyawatta, Hendala. It is the position of the Petitioner that there was no public drain over the Petitioner's land to drain rain water or waste water emanating from the neighbourhood. The Petitioner submitted that in June 2011, some unknown persons entered the said land of the Petitioner and caused an opening, 2feet wide, in the boundary wall of the Petitioner and have cut a drain of 10 feet length and 2 feet depth across the Petitioner's land. The Petitioner's husband lodged a complaint at the Police Station, Wattala, against a criminal trespass and cutting a drain, as aforesaid. The Petitioner submitted that this newly cut drain brings dirty and highly political water into the Petitioner's land. The Petitioner also submitted that in the year 2006, the Divisional Secretary, Wattala, attempted to build a masonry drain on the Petitioner's land, to which the Petitioner objected, and the Petitioner filed a writ application in the Court of Appeal against the said action of the Divisional Secretary, to build a masonry drain across the Petitioner's land and, in the said application, the Divisional Secretary gave an undertaking that they will not build a masonry drain across the land other than by legal authority. But it appears that a drain was cut across and was in existence as far back as 2006 across the Petitioner's land, and the dispute arose when the Divisional Secretary was about to build a masonry drain. But, after the Divisional Secretary gave an undertaking that the Divisional Secretary will take steps according to law to build a masonry drain, the Petitioner had filled the drain cut and closed the said drain. This was in the year 2006 and, thereafter, in the year 2011, the Pradeshiya Sabhas has once again tried to open up the drain by cutting and clearing the drain.

This present application is to obtain a Writ of Prohibition preventing the Respondent from entering and/or causing or building a masonry drain on the Petitioner's land described in the Schedule. In this the Respondents were not represented even though they were noticed. The 1st Respondent is the Wattala Pradeshiya Sabha, which is

governed by the Pradeshiya Sabhas Act No.15 of 1987. Under Section 38 of the Pradeshiya Sabhas Act No.15 of 1987 the Pradeshiya Sabha was empowered to enter upon lands for repairs of thoroughfares, bridges and drains. The said section provides "that it shall be lawful for the officers of the Pradeshiya Sabha and for the servants, workmen and labourers employed by or under it to enter upon any land to do any act for the purpose of building or excavating any drain under the provisions of this Act."

It is not clear from the material submitted to this Court whether there was an existing drain across this land. According to the Petitioner's Application, there was an existing drain in 2006, and when the Divisional Secretary decided to convert that drain into a masonry drain, the Petitioner filed a Writ Application, and the Divisional Secretary gave an undertaking that a masonry drain will be built only in accordance with the law. But, after this undertaking was given, the Petitioner has closed down the said drain and thereafter, it appears, that the Pradeshiya Sabha has taken steps to build a masonry drain in the year 2011, and the Petitioner, by this application, has challenged the said decision. The Pradeshiya Sabha is empowered under Section 38 by the Pradeshiya Sabhas Act to build a masonry drain or repair an existing drain, but it is a question of fact whether there was a drain in the said land even before 2006. This Court cannot decide on questions of fact. The Petitioner's claim is that the building of a masonry drain on the Petitioner's land is unlawful and illegal and, therefore, she has sought a Writ of Prohibition to prohibit the same, but according to the Pradeshiya Sabhas Act, if it is an existing drain, the Pradeshiya Sabha is entitled to maintain the drain in the way it thinks fit, but as facts are in dispute in this application, this Court cannot decide the issues on fact and, therefore, this Court is not in a position to issue a Writ of Prohibition, as prayed for, by the Petitioner. Therefore, this Court dismisses this application without cost.

President of the Court of Appeal