

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

C.A. 854/2009 (Writ)

S.A. Kanthi Suraweera,  
'Namal Sevana', Galigamuwa,  
Galigamuwa Town.

Vs.

**PETITIONER**

1. Commissioner of Agrarian Services  
Agrarian Services Office,  
Kegalle.
2. Assistant Commissioner of Agrarian  
Services, Agrarian Services Office,  
Kegalle.
3. The Attorney General,  
Attorney-General's Department,  
Colombo 12.
4. U. K. Punchirala  
Warakapitiya,  
Galigamuwa Town.
5. W. M. Sirisena  
Watte Road,  
Galigamuwa Town.
6. H. A. Kalubanda,  
Warakapitiya,  
Galigamuwa Town.

7. N. A. Karunarithna  
Warakapitiya,  
Galigamuwa Town.
8. U. K. Dharmadasa,  
Warakapitiya,  
Galigamuwa Town.
9. P. R. P. S. Jayawardena  
Galigamuwa Town.  
Galigamuwa.
10. H. A. Wijerathna  
Galigamuwa Town.  
Galigamuwa.
11. Daya Ranjith Hettiarachchi Sandasiri  
Galigamuwa Town.  
Galigamuwa.
12. H. A. Laksiri Hettiarachchi  
Galigamuwa Town.  
Galigamuwa.
13. N. W. Ranmenike  
Galigamuwa Town.  
Galigamuwa.
14. H. A. Heenbanda,  
Warakapitiya,  
Galigamuwa Town.
15. P. M. Soma Menike  
Galigamuwa Town.  
Galigamuwa.

16. U. K. Kulasena  
Panwatte,  
Galigamuwa Town

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** Mahinda Nanayakkara with A. Jayatilleke for the Petitioner  
  
Chaya Sri Nammuni S.C., for 1<sup>st</sup> – 3<sup>rd</sup> Respondents  
  
Sunil Abeyratne for 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 16<sup>th</sup> Respondents

**ARGUED ON:** 24.07.2013

**DECIDED ON:** 29.10.2013

**GOONERATNE J.**

The Petitioner to this application has sought a Writ of Certiorari to quash order P31 (based on interference with cultivation rights, threshing right, right to use threshing floor etc. under Section 90 of the Agrarian Service Law No. 46 of 2000) and P32 being reasons given in terms of the said law and Section 90 thereof (order made by the 2<sup>nd</sup> Respondent). 4<sup>th</sup> to 16<sup>th</sup> Applicant Respondents

are those who made the application or complaint (P4) to the 1<sup>st</sup> Respondent Commissioner. In the body of the petition there is reference to holding of an inquiry based on the above complaint P4 to the official Respondent and Petitioner refusal to participate and the reason to do so are as follows:

1. Rejecting P1 notice calling for an inquiry based on P3 ruling of 2<sup>nd</sup> Respondent where Petitioner's application refused by 2<sup>nd</sup> Respondent since it does not fall within Section 90 referred to above.
2. Refused to participate in another inquiry (P6) for the reason in letter P7.
3. 2<sup>nd</sup> Respondent put off inquiry on the ground of Petitioner being absent and decided to proceed ex-parte. (vide P8 & P9).
4. Petitioners Attorney-at-Law objected to above Vide P10.

P10 refer to a case pending in Kegalle District Court bearing No. 7627/L for declaration of title and ejectment (P11).

Petitioner also state that in paragraphs 13/14 of the petition that the 2<sup>nd</sup> Respondent held an inquiry and on 8.11.2008 and decided to hold a fresh inquiry on 16.2.2009 (P12).

Perusal of P12 only indicates that the inquiry due to be held on 16.2.2009 was postponed for 18.2.2009. Paragraph 13 of the petition is misleading. Paragraphs 14, 15 & 16 refer to holding of an inquiry by 7<sup>th</sup> Respondent and inspection. The objecting for such inquiry by Attorney produced

as P16, P17 & P20. The learned counsel for Petitioner also drew the attention of this court to the written submissions filed in the District Court of Kegalle (P30). We are possessed of those matters stated therein.

The learned State Counsel who appeared for the official Respondent thought it fit inter alia to refer to the last paragraph of the High Court Order at P5. It reads thus “කෙසේ වුවත් පාර්ශ්වකරුවන් අතර ඇති සමථය අනුව මින් ඉදිරියට ගොවිජන සංවර්ධන සහකාර කොමසාරිස් වෙත මෙම නඩුවට අදාළ පාර්ශ්වයන්ගෙන් පැමිණිල්ලක් කරනු ලැබුවහොත් එම ආරවුල සම්බන්ධයෙන් නිසි පරීක්ෂණයක් පවත්වා සුදුසු නියෝගයක් කිකුත් කල යුතුය. එසේ පරීක්ෂණයක් නොපවත්වා නියෝගයක් කළහොත් මෙම නඩුවේ පාර්ශ්වකරුවන්ට මෙම අධිකරණයට ඉදිරිපත් වී කරුණු ඉදිරිපත් කිරීමට අවස්ථාවක් ඇති බව දන්වමි ඒ අනුව එම සමථයට අනුව ඊට අයදුමට ඉඩ දෙමි. Both the learned State Counsel and learned Counsel for the 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> & 16<sup>th</sup> Respondents stressed the fact that having regard to the provisions of Section 90 (1) of the above Statute the Respondent have no title and need not have title or ownership for the threshing floor, and that they are entitled to their threshing rights and or cultivation rights to the threshing floor.

Petitioner relies to establish his case for a Writ of Certiorari according to the grounds stated in paragraph 28 of the petition. I find that the matters pleaded in paragraph 28 (a) to (c) are mere allegation without any cogent reasons. Letter P3 refer to the High Court order and in compliance with such orders an inquiry would

be held under Section 90(1) of the above statute and a site inspection. Letter P2 emphasis the fact that the official Respondent cannot hold an inquiry in view of the matters stated in (1) above i.e Petitioner's application refused since it does not fall within Section 90. As such 2<sup>nd</sup> Respondent cannot inquire into the complaint of the other Respondents who were the same parties in both applications. I am unable to accept the above submission. As observed above mere allegations would not suffice. The relevant High Court order has clearly identified the powers and or jurisdiction of the 2<sup>nd</sup> Respondent as stated above. In compliance with same the 2<sup>nd</sup> Respondent proceeded to examine and inquire into the complaint of the other Respondents.

It would be meaningless to take up the position that orders in P31 & P32 are erroneous or contrary to law and ultra vires. Section 90(1) of the law reads thus:

Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner General after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order on such person cultivator or occupier requiring him to comply with such directions as may be specified in such order necessary for the protection of such rights:

Provided that an order under this section shall not be made for the eviction of any person from such agricultural land.

Provided further that an order issued under subsection (1) shall not prejudice the right title or interest of such person, cultivator or occupier to such land, crop or livestock in respect of which such order is made.

The above Section cater to both owner cultivator and occupier of Agricultural land. The section is more concerned to preserve the cultivation rights, threshing rights, the right of using threshing floor. The question of title does not arise and the provisions of the Statute are very clear. As such 2<sup>nd</sup> Respondent's position is fortified in terms of Section 90 of the above Statute. Petitioner had his own reasons not to take part in the inquiry. Having done so Petitioner cannot be heard to complain of any violation of natural justice and the duty to act fairly. In fact the 2<sup>nd</sup> Respondent made all endeavor to summon the Petitioner and even postpone the inquiry to enable the Petitioner to be present. But the Petitioner seems to have been very indifferent and did not wish to participate in the inquiry at any cost. In these circumstance one cannot complain of breach of natural justice.

The right to use a threshing floor is a servitude recognized in Law 36 NLR 267.

In all the facts and circumstances of this case, we see no merit in the application of the Petitioner to grant relief. Section 90 of the above Statute

empowers the official Respondents to act in terms of the said section and inquire, to preserve the threshing rights, the right to use the threshing floor etc. These are all recognized rights in terms of the said section. We see no basis to interfere with the orders made in P31 & P32. As such application is dismissed without cost.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL