

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

1. M. D. Sanjaya Asanka Somasiri
M. D. Dhanushka Samanpriya
H. D. Chandrawathie.

All of No. 21/106/6,
Dadagamuwa, Weyangoda.

PETITIONERS

C.A 57/2012 (Writ)

Vs.

1. Commissioner General of Agrarian
Development
Department of Agrarian Development
P. O. Box 537, Colombo 7.
2. Assistant Commissioner of Agrarian
Development,
Agrarian Development Office ,
Sri Bodhiya Road, Gampaha.

And 7 others.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Dr. Sunil Cooray for the Petitioners

N. D. B. Unamboowe D.S.G for the 1st & 2nd Respondents

Wijedasa Rajapakse P.C., with Dasun Nagasena and Rasitha
For the 3rd to 7th Respondents

ARGUED ON: 21.01.2014

DECIDED ON: 31.03.2014

GOONERATNE J.

The Petitioners in this Writ Application have sought a Writ of Certiorari to quash the orders referred to in sub para (c) of the prayer to the petition marked P10 & P11. This application relates to obstructions of a roadway across the land described in schedules 1 & 2 of the petition, which road leads to a paddy field and to a 'kamatha' by erecting barbed wire fence. A complaint was made by 3rd to 7th Respondents against the Petitioners. Complaint is produced marked P4. The body of the petition refer, as to how the Petitioners derived title

to the lands described in the petition. (paras 1, 2, 6, 7 & 8) . There is also reference to certain deeds marked P1, P2, P5 and plan P3, by the Petitioners.

One of the points raised in the petition and as submitted to this court by learned counsel for the Petitioner was that deeds 2752 (P1) and 5282 (C) does not show or describe any such roadway or 'kamatha' in its schedules. Both deeds attested on or about 1979 and 1960. Another point stressed is that the 'kamatha' has not been registered in terms of Act No. 46 of 2000 in the list of Agrarian Lands. The 2nd Respondent held an inquiry under Section 90(1) of the Agrarian Development Act No. 46 of 2000 on the dates mentioned in the petition. At the conclusion of leading oral evidence it is pleaded that a sight inspection was held by the 2nd Respondent. The inspection report is marked and produced P9. In para 22 of the petition several grounds are included on which the Petitioners relies to issue a Writ of Certiorari.

However before I proceed to consider the position of the Respondents the following sections of the above Statute is noted.

Section 90(1) of Act No. 46 of 2000 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 position of the 1st & 2nd Respondents as gathered from the material contained in the objections and submissions of learned Deputy Solicitor General was that the 3rd to 7th Respondents had given evidence at the inquiry and according to the oral testimony there is evidence of the use of the roadway to the 'kamatha' in question. It is the position of these Respondents that by usage farmers would be entitled to the roadway. There is no denial of the fact that the village had no register. There is also reference to a contradiction of the Petitioners witnesses (R5 a). Site inspection was also held (R11) and both parties have signed the report. There is also a sketch produced marked R12. This enables court to visualize the disputed area. Parties were also requested to settle the issue but there had been no consensus between them.

The position of learned President's Counsel for 3rd to 7th Respondents is that it is based on oral testimony before the inquiring officer (2nd Respondent) and his clients are entitled to the use of the roadway to the 'kamatha' in question, owing to long years of user. These Respondents have raised an objection based on laches in their objections.

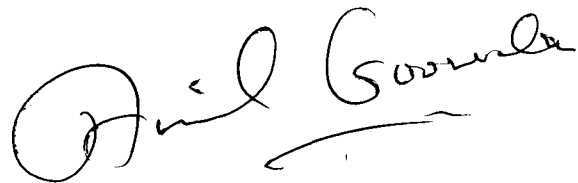
The main object of the above section 90(1) of Act No. 46 of 2000 is to prevent any interference with cultivation rights. It has nothing to do with title nor will it entitle the authorities concerned to make an order for eviction. The idea being to preserve agricultural usages as a right to use threshing floor, right to remove agriculture produce, right to use agricultural road etc. to enable the farmers to get the maximum benefit on such matters without any hindrance. An agricultural usage of using or a right to threshing floor is a right enjoyed by farmers over the years for a very long time in our country as traced in history.

The Petitioners rely on several grounds as pleaded in para 22 of the petition. This court is of the view that the several grounds urged would not entitle the Petitioners to seek a Writ of Certiorari in the manner pleaded therein. The 2nd Respondent would be entitled to arrive at a decision based on oral testimony, since the governing statute merely contemplate not to disturb agricultural rights maintained for a fairly long period of time. An absence of a roadway in the plans

produced or the deeds referred to cannot be considered in the circumstances and in the context of the case since title to the property is not an issue. Primary aspect is the usage which could be decided on oral and or documentary evidence, other than by deeds or plans. As such there is no error on the face of the record. The 2nd Respondent has made arrangements or given an opportunity for both parties to present each others' case. A fair hearing had been granted, in order to achieve the purpose of the statute. A site inspection was also done at the close of the inquiry. I cannot act on unfounded baseless allegations and issue the writ prayed for in these proceedings, writs being discretionary remedies of court.

Therefore I reject the application for a Writ of Certiorari and dismiss this applications without costs.

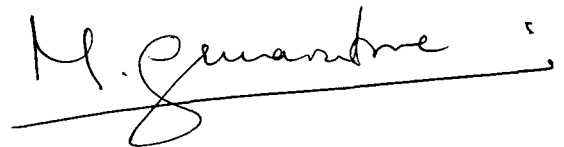
Application dismissed.



JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne

I agree.



JUDGE OF THE COURT OF APPEAL