

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Writ of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Shehan Calistus Puvinyagam of No. J/2/46, Green Terrace Housing Scheme, Pittugala, Malambe.
2. Lloyd Desmond Christopher of Southern Sun No. J/2/27, Green Terrace Housing Scheme, Pittugala, Malabe.
3. Obeyesiriwardena Arachchige Lionel Of J/2/23, Green Terrace Housing Scheme, Pittugala, Malambe.

C.A. (Writ) Application No.339/2009

PETITIONER

Vs

1. The Commissioner General of Agrarian Development, Office of the Commissioner General of Agrarian Development, No. 42, Sir Marcus Fernando Mawatha, Colombo 07.

2. Additional Commissioner General
of Agrarian Development,
Office of the Commissioner General
of Agrarian Development,
No.42, Sir Marcus Fernando
Mawatha, Colombo 07.
3. K.H.S. Krishanthi
Assistant Commissioner of
Agrarian Development,
Office of the Assistant
Commissioner of Agrarian
Development Colombo,
No. 336, Rev. Baddegama
Wimalawansa Mawatha,
Colombo 10.
4. Saroja Jeewani Balasuriya,
Agrarian Development Officer,
Agrarian Development Office,
Malambe.
5. Ranasinghe Arachchige Manjula
Prasanna,
Agricultural Research and
Production Assistant-Malabe East,
Agrarian Development Office
Malambe and also at
No.101,Kahantota Road, Malambe.
6. Deeptha Panagoda,
Secretary, Farmers' Association
Malambe East, No.115/1,
Kahantota Road, Malambe.
7. Vithanage Don Ranaraja,
No. 232, Kahantota Road,
Malambe.
8. Farmers' Association Malambe
East, No.115/1, Kahantota Road,
Malambe.

9. Kelsey Development (Pvt) Ltd,
No.165, Kynsey Road, Colombo 08.

RESPONDENTS

BEFORE : Deepali Wijesundera J.

COUNSEL : S.N. Vijithsinghe with
L. Senavirathne for the
Petitioners.
Nihal Fernando PC with Amith
Silva for the 9th Respondent.
Yuresha Fernando SC for the 1st
to 5th Respondents.

ARGUED ON : 13th March, 2014.

DECIDED ON : 04th July, 2014.

Deepali Wijesundera J.

The petitioners have filed this application praying for a writ of Certiorari to quash the decision taken by the 3rd respondent on 29/04/2009 marked and produced as **P13** and **P14**. And also a writ of

prohibition to prohibit the 1st to 7th respondents from using Lot 73 of Plan No. 1284 as a road way to the paddy fields adjoining their land.

The 9th respondent has purchased a large land, blocked it out and called it '*Green Terrace*' and sold the built houses. The petitioners are some of the persons who bought houses in this housing scheme. These blocks of land are depicted in Plan No. 1284 dated 02/08/1993 marked as 9R1 and 101. The dispute is regarding the use of Lot 73 in the said plan.

The petitioner's argument was that the said Lot 73 is exclusively reserved for the use of the housing scheme and not for the farmers' of the adjoining land and that ever since they came into occupation of the land it was only used by the people of the housing scheme.

The 3rd respondent acting on a complaint made by a person cultivating the adjoining land acting under the Agrarian Development Act No.46 of 2000 has directed that there is a roadway with an access point to the adjoining paddy land. The petitioners and the 9th respondent argued that the 3rd respondent has not referred to any material upon which she has based her findings and has based her direction on the

letter marked as **1R1** dated 23/08/1993. The petitioners stated that this roadway was drawn as Lot 73 in the plan marked **9R1** and that there was no roadway prior to that and that the adjoining paddy land is separated by a ditch, which is not accessible through the housing scheme. They further stated that the Kaduwela Pradeshiya Sabha has approved their plan to block out the said land and that the said roadway was not acquired by the Kaduwela Pradeshiya Sabha.

The petitioners further stated that the 3rd respondent did not have jurisdiction to act under Sec. 90 of the Agrarian Development Act. The petitioners argued that on the inquiry date the complainant did not come for the inquiry which makes the decision null and void.

1st to 8th respondents argument was that the said act provides the Commissioner General powers to declare any extent of land as an agricultural land and that Sec. 28 describes the vide powers vested in the Commissioner General. The respondents stated that the 3rd respondent acted on the complaint made by the 7th respondent and that Sec. 90 makes provision to hold an inquiry. The said inquiry was conducted after the field visit by the 3rd respondent.

9R1 plan No. 1284 which is dated 02/08/1993 was made after the Kaduwela Pradeshiya Sabha granted permission to the 9th respondent to block out the said land. By 1R1 the Kaduwela Pradeshiya Sabha has informed the 9th respondent that on a previous discussion they had, the 9th respondent has agreed to reserve a road access to the paddy field adjoining the said housing scheme. This document shows that the 9th respondent has agreed not to block the roadway prior to blocking out the land and obtained permission from the Kaduwela Pradeshiya Sabha to block out the said land. The petitioners were warned not to block the road way by the Assistant Commissioner of Agrarian Development (509). The 3rd respondent after a field inspection had summoned all parties for the inquiry and after recording their statements only has made a direction, this is marked as P14 and the petitioners are seeking to quash the said findings. The respondent has come to this finding after recording statements and prior to that inspected the said land in the presence of the petitioners. One can not say the 3rd respondent has gone beyond the powers conferred by Sec. 90 of the said act.

Sec. 90 reads thus;

90 (1) 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:

P13 the other document the petitioner is seeking to quash is a notice sent to the petitioner stating that if he does not stop the obstructions action will be taken against him under Sec. 90 of the said Act. It states that if he has obstructed the said roadway to remove the obstructions if not legal action will be taken against him under Sec. 90. This was done prior to **P14**, which is the procedure to follow under the said act. The respondents have not violated the laws of natural justice by sending this notice to the petitioner who was afforded an opportunity to state his case.

Document marked **P14** is the proceedings of the inquiry held at Agrarian Development Council where the evidence of the petitioners and some officers are recorded. This is not a document which can be quashed.

The petitioners have prayed to quash **P14** which include the entire proceeding of the inquiry and not only the finding of the 3rd respondent.

P13 is a legal document made under the relevant sections of the Agrarian Development Act which can not be said is illegal.

For the afore stated reason this court see no reason to grant the relief prayed for in the petition. The petition is dismissed with costs fixed at Rs. 50,000/=



JUDGE OF THE COURT OF APPEAL.