

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

CA Writ No. 311/2012

R.G. Nimal Premasiri
"Sriyawasa"
No: 5, Latuwasgoda,
Veyangoda.

Petitioner

Vs.

1. Pradeshiya Sabha, Attanagalle.
2. Chairman, Pradeshiya Sabha, Attanagalle.

And 03 others

Respondents

C.A. (Writ) Application No. 311/2012

BEFORE : K.T. CHITRASIRI, J. &
L.T.B. DEHIDENIYA, J.

COUNSEL : S. Kumarasingham for the Petitioner.
Udeshi Samaraweera for the 1st, 2nd & 3rd
Respondents.
Chaya Sri Nammuni SC for the 4th & 5th
Respondents.

ARGUED AND

DECIDED ON : 02nd July, 2015.

K.T. CHITRASIRI, J.

Learned Counsel for the 1st to 3rd respondents submits that the preliminary objections raised in paragraph 2 in the objections dated 28.3.2013 would be taken up with the main matter if necessary arises. She also submits that the preliminary objections raised in items (a) and (b) in paragraph 2 therein will not be taken up.

Heard all three Counsel in support of their respective cases. This is an application seeking to obtain a mandate in the nature of a Writ of Certiorari and a Writ of Prohibition to quash and to set aside any arrangement made by the 1st, 2nd and 3rd respondents to acquire the

land in question for the purpose of constructing a roadway by expanding the width of a ridge in a paddy field. The Writ of Prohibition that the petitioner has sought is to restrain the 1st to 3rd respondents from proceeding with the proposed scheme to have a roadway.

Lots 1 and 3 referred to in the document marked 4R1 filed with the objections of the 4th respondent was acquired for the aforesaid road widening under the Land Acquisition Act No. 9 of 1950 as amended. The steps in terms of the said Enactment had been taken by the 4th respondent, the Divisional Secretary. Acquisition process has already been concluded and the amount of compensation due to the petitioner also had been determined by the Divisional Secretary. The said amount of money had been deposited in the District Court of Attanagalla.

Admittedly, the said acquisition of the land that belonged to the petitioner was to have an access road leading to several houses as shown in the document marked 1R6 filed with the objections of the first three respondents. The said acquisition was to widen the ridge of a paddy field that was 4 feet in width and to become it to a 8 feet roadway. The extent of the land belonging to the petitioner that was affected by the acquisition amounts to .0102 Hectare (102 square meters)

The above circumstances show that the aforesaid acquisition of land is for a public purpose by having a roadway for the use of the villagers. Comparatively very small area of land was acquired for this purpose. However, the petitioner has not challenged the purpose for which the land was acquired.

Basically, the complaint of the petitioner was that the widening of the ridge would contravene the provisions of the Agrarian Development Act No.46 of 2000. Learned Counsel for the petitioner submitted that filling of paddy fields are made prohibited under the Agrarian Development Act.

In paragraph 16(a) of the petition, it is stated that the decision of the Pradeshiya Sabha Attanagalla is ultra vires in terms of Section 32(1) (a)(b) and (c) of the Agrarian Development Act No.46 of 2000. The aforesaid section 32(1) makes it an offence, if a paddy land is filled with soil or with other material without obtaining written permission from the Commissioner General of Agrarian Services. The documents marked 1R7A and 1R7B filed with the objections of the first three respondents show that the Commissioner of Agrarian Services has permitted the first three respondents to proceed with the process to have a roadway after acquiring the land in question. The said permission was given pursuant to the request made by the 2nd respondent by the letter

marked 1R7. Admittedly, the acquisition process has now been completed.

Therefore, it is clear that the permission from the Commissioner General of Agrarian Services which is required under Section 32 of the Agrarian Development Act had already been obtained by the first three respondents for the purpose of filling the paddy field. Therefore, the complaint of the petitioner as to the violation of the provisions contained in the Agrarian Development Act No.46 of 2000 particularly Section 32 of the Act is not sustainable.

Moreover, the petitioner has not taken steps to object for the acquisition of his land in terms of the Land Acquisition Act though specific procedure is found in the Act for the owners of land to follow. He has kept silent without any objection being raised against the acquisition until he was informed of the decision as to the payment of compensation in respect of his land. Therefore, it is seen that the petitioner had the opportunity to take steps according to law to object for the acquisition which he has failed to take. It is settled law that a Court will not exercise writ jurisdiction if the person who seeks redress has not exercised his/her alternative remedial measures given by the law. [**Tennakoon V. Director General Customs 2004(1) SLR 53, Gunasekera V. Weerakoon 73/262, Dedigama V. Preventive Officer Sri Lanka Customs and others 2004 (1 SLR 371)**]. Therefore, the conduct of the

petitioner in this instance also would be a bar to issue a mandate in the nature of a writ as sought in this instance.

For the reasons setout above, this application is dismissed with costs fixed at Rs.25,000/= payable to the 1st respondent.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. DEHIDENIYA, J.

I agree

JUDGE OF THE COURT OF APPEAL

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