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

In the matter of an appeal under Article 154 P(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (PHC) 65/2010

PHC (North Western Province)

Case No. 02/2009 (Writ)

01. G.D. Kusumawathi,
Sampath Niwasa,
Harankahagoda,
Weuda.

02. G.D. Jayarathne,
Pihimbuwa,
Maspotha.

Petitioners - Appellants

-Vs-

01. Assistant Commissioner of
Agrarian Services,
Kandy Road,
Kurunegala.

02. Agrarian Service
Development Officer,
Agrarian Service Office,
Rambodagalla.

03. R.D. Nimal Chandrasiri,
Ilukpitiya,
Pihimbuwa.

Respondents – Respondents

Before : **W.M.M.Malinie Gunarathne, J**
: **P.R.Walgama, J**

Counsel : **Shantha Jayawardana with C. Nanayakkarafor the Petitioner – Appellant.**
: **P.K. Prince Perera with H.M.S. Fonseka for the 3rd Respondent – Respondent.**

Argued on : 11.08.2015
Decided on: 29.04.2016

CASE-NO- CA (PHC) 65/2010- JUDGMENT- 29.04.2016

P.R.Walgama, J

The Petitioner - Appellants (in short the Appellants) moved this Court for an issuance of a writ

in the nature of a Mandamus, to compel the 1st Respondent to act in terms of Section 33(3) of the Agrarian Services Act No. 46 of 2000, and for an interim order restraining the 3rd Respondent in constructing any building whatsoever, in the suit premises.

Following are the facts crystallized in the above petition of the petitioner, that.

The Appellants were the co owners of the land more fully described in the schedule to the Deed bearing No. 8223 dated 1969.12.18 attested by D.C.E. Senanayake Notary Public.

On or about 15th of May 2008 the 3rd Respondent had illegally started constructing a building in the afore said land which is been used as threshing floor belonging to the Appellants.

The Appellants had informed the said illegal act of the 3rd Respondent, to the 1st Respondent by the letter marked P4.

For a better appreciation of the Section 33 of the Agrarian Development Act No. 46 of 2000, under which the Appellant has sought relief is reproduced here under;

Section 33(1)

"No person shall fill any extent of paddy land or remove any soil from any extent of paddy land or erect any structure on any extent of paddy land except with the written permission of the Commissioner General.

(2) any person contravenes the provisions of subsection (1) shall be guilty of an offence under this Act.

(3) Where the Commissioner – General, or the Additional Commissioner – General or Commissioner or Deputy Commissioner or Assistant Commissioner is informed that any person is acting in contravention of the provision of subsection (1) the Commissioner - General or the Additional Commissioner - General or the Deputy Commissioner or Assistant Commissioner may make an application in writing, substantially in the form set out in the local jurisdiction such extent of paddy land or any part thereof, is situated and praying for the issue of an order restraining the person so contravening the provisions of subsection (1) and his agents and servants from acting in contravention of the provisions of subsection (1).

Therefore it is contended by the Appellants that the 1st Respondent had failed to take any action against

the 3rd Respondent even after the Appellants had informed of the unlawful act as stated above.

The 1st and the 2nd Respondent in objecting to the said application of the Appellants had stated thus;

That according to the provisions of the Constitution this Court has no jurisdiction to hear and determine the matter in issue.

That the Appellants had not complied with the rule 3(1)(a) of the Court of Appeal Rules of 1990, in that had failed to annexed all the necessary documents material to the instant matter.

The Learned High Court Judge having heard the submissions made by both parties had arrived at the conclusion that the provincial High Court has no jurisdiction to hear and determine the matter in hand, mainly based on the Supreme Court judgment of Wijesuriya .vs. Nimalawathi Wanigasinghe (S.C. Appeal No. 33/2007)

The core issue in the instant application is that to decide whether the Provincial High Court is empowered to make any order to quash any determination made, by way of a writ of Certiorari or to compel to perform an official act by way writ of Mandamus in terms of the sections of the Agrarian Development Act No 46 Of 2000.

Article 154 P (4) of the Constitution provides thus;

Every such High Court shall have jurisdiction to issue, according to law;

a. Orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; AND

b. Oder in the nature of writs of Certiorari, prohibition, procedendo, mandamus, and quo warranto against any person exercising, within the Province, any power under-

   1. Any law; or
   2. Any statues made by the Provincial Council established for that province

   In respect of any matter set out in the Provincial Council list.

   Therefore it is abundantly clear that the Provincial High Court is empowered to issue an order in the nature of a writ only on matters arising within the province in respect of any matter coming within the Provincial Council list.

It is also to be noted that the High of Province is empowered to issue writs in respect of only those matters enumerated in the Provincial Council list (1) contained in the Ninth schedule to the 13th Amendment

to the Constitution and against any authority exercising the powers within the province.

The item 9 of the Provincial Council List deals with the matters relating to Agriculture and Agrarian Services and item 18 contains matters pertaining to LAND set out in Appendix II.

The said item 9 enumerates thus;

" Agriculture and Agrarian Services-

9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in interprovincial irrigation and land settlement schemes, State land and plantation agriculture,

9.2 –Rehabilitation and maintenance of minor irrigation work,

9.3- Agriculture research, save and except institutions designated as national agricultural research institution.

Item 18

LAND- Land that is to say, rights in or over the land, land tenure transfer and alienation of land, land use, land settlement and land improvement to the extent set out in appendix ii.

The Learned High Court Judge has dismissed the petition of the Petitioner- Appellant on the basis that

the High Court of Province, stands denuded of jurisdiction to issue a writ, since the same has been observed in the case of WIJESURIYA .VS. NIMALAWATHI WANIGASINGHE which has interpreted thus;

"While 'within' may give rise to multiple interpretations, the only reasonable interpretation in the light of the legislative history and purpose of Article 154(p)(4)(b) and in deed the 13th Amendment as a whole, is that it refers to that qualitative nature and scope of the power at issue, and not necessarily the geographic location of the person who exercised it. In other words the question that this 'within' requirement leads us to determine is 'Weather the power at issue is one that is local or 'provincial' in nature, or one exercised from, or as part of , a centrally acting authority or position? And the only logical, reasonable and conclusive determination is that it is exercised from a centrally acting authority or position." (emphasis added)

Hence in the above interpretation of the exercising the powers 'within' means is 'as part of, a centrally acting authority or position'

For the above compelling reasons I am of the view that the Learned High Court Judge has arrived at a correct determination and as such I up hold the

impugned judgment and dismiss the appeal subject to a cost of Rs. 5000/.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL