

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

In the matter of an appeal made under
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

M.A.Karunarathe

Wickramakanda, Karandana

And two others.

Petitioner- Appellants.

C.A.(PHC) 17/2007

P;H;C;Rathnapura No. HCR/WA/16/2004

Vs.

Divisional Secretary

Divisional Secretariat,

Eheliyagoda

And 03 others.

Respondents-Respondents

C. A.(PHC) 17/2007

P.H.C.Rathnapura No.HCR/WA/16/04

Before : H.C.J.Madawala,J. and
L.T.B.Devideniya,J.

Counsel : Petitioner-Appellants are absent and
unrepresented.
Manohara Jayasinghe S.C. for the
1st to 3rd Respondents.

Argued and : 06.09.2016

Decided on : 09.12.2016.

H.C.J.Madawala,J.

This appeal is preferred by the appellant to set aside the order of the Provincial High Court of the Sabaragamuwa holden in Rathnapura, dated 31/1/2007 in case No.HCR/WR/16/04 and to issue a writ prayed by the appellant and for costs.

When this matter was taken up for argument on 06/09/2016 the petitioner-appellants were absent and unrepresented. 1st to 3rd respondents were present and also represented by the State Counsel. The learned State

Counsel made oral submissions and further he moved for time to file written submissions. On 22/9/2016 counsel for the Respondents submitted that the written submissions tendered at the Registry and the judgment was reserved for 10/11/2016 . On 10/11/2016 which was also referred for 09/12/2016.

The three petitioner-appellants sought certiorari in the High Court of Sabaragamuwa Province in Ratnapura to quash the decision of the Divisional Secretary, Eheliyagoda (1st Respondent)to draw electricity wires over their property. The petitioner's position is that the said decision is unlawful in that there is a shorter route on which the wires can be drawn and as such there was no necessity to encroach upon the petitioner's property. That the respondent was acting maliciously in collusion with the 4th respondent whose ulterior motive he was seeking to further. The respondents position that the learned High Court Judge dismissed the petitioner's application because when the matter was taken up for the argument the petitioners were not present in court nor were they represented by the counsel.

The State Counsel makes brief submissions explaining that the writ application before the High Court could not be maintained for want of jurisdiction and it was contended by the respondent as follows:

“The terms of Article 154 (P) (4) (b) of the Constitution provides that the Provincial High Court has writ jurisdiction only over such matters that come within the Provincial Council list in the Ninth Schedule. Thus, for the petitioners to succeed they must show that the subject matter of this application is included in the said Provincial Council List.” It was also contended that in arriving at the decision to draw the electricity wires over the petitioner’s property regard to the alternative route proposed by the petitioners. This has to be rejected as inquiry conducted in terms of Electricity Act found that the route is more invasive of private property than the one through the petitioner’s property. The respondents also submit that the Divisional Secretary’s decision cannot be subjected to judicial review. Section 15 (11) provides “the decision of the government agent under the section in regard to any of the acts specified in the notice under subsection (3) shall be final”. The position has been confirmed in the *Surabiel Singho and others Vs. Don Kularatne Rajapakse and others in C.A.No.934/88*.

As regard to submissions that the drawing of an electricity lines creates a public servitude. I have to note that this is a novel submission. A servitude is right pertaining to property which is applicable at the common law. Electricity Lines are drawn in terms of statutory power that is vested under the Electricity Act. They are two entirely different concepts. Therefore I cannot agree with the submission that the consideration relevant to the granting of a right to way of necessity should apply in relating to the drawing of electricity lines.

In 2003, the 2nd and 3rd respondents proposed the drawing of a high-tension electricity had from Wickremakanda to Epitawela and inquiry under the provisions of Electricity Act , the 1st respondent decided to approve the aforesaid scheme. Consequently , the petitioners filed the present application averring inter alia that the said electricity lines were to be drawn over their land and praying that the decision of the 1st respondent at X6 be quashed.

The respondent having after filed their objection. And the High Court Judge direct to file submissions in writing. Since no relief has been claimed from the 2nd and 3rd respondents and they have been named only for the purpose of notice, the 1st respondent tenders his written submission .

The petitioner's position was that the 1st respondent had decided the proposed route of the electricity lines over their land, even though there existed an alternative route over the Gamsabba Road. It was alleged that the above 1st respondent's decision has been a result of the intervention and coercion of the 4th respondent who was seeking to ensure that the road upon the petitioner's land which was the subject of the proposed route would be declared a public road in the future. The petitioners are of the position that the proposed electricity route is of danger to their property and the decision to construct same should be quashed. The 1st respondent position was that the petitioners have no right to invoke the jurisdiction of the High Court in the present matter in terms of the Constitution in terms of Article 154P (4) (b) (ii) of the High Court of the Provinces has jurisdiction only with regard to subject contained in the Provincial Council List the extension of electrification within the provinces and the promotion and regulation of the

use of such electricity is in fact contained in the Concurrent list under items 32 thereof.

The 1st respondent submits that the court has no jurisdiction to hear the present application and therefore, the petitioner's case dismissed in limine. And the unreported judgment in the Chilaw High Court Case No.122/94 decided on 20.07.1994 marked "1R1" .

Accordingly we find that the learned High Court Judge has arrived at a correct decision. We see no reasons as to why we should interfere with the order of the learned High Court Judge and dismiss the appeal without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B.Dehideniya,J.

I agree.

JUDGE OF THE COURT OF APPEAL