

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

*In the matter of an Application for  
mandates in the nature of Writ of  
Certiorari in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

C A (Writ) Application

No. 83 / 2013

Ilandarige Piyadasa,  
C/o Janaka Rice Mill,  
  
Viharagala,  
Suriyawewa.

**PETITIONER**

-Vs-

1. Mahaweli Authority of Sri Lanka,

No. 500,  
T B Jayah Mawatha,  
Colombo 10.

2. Gamini Sisira Kumara,  
Divisional Manager,  
Mahaweli Authority (Divisional  
Office),  
Suriyawewa.
3. Asanka Gunathilaka,  
Resident Project Manager,  
Mahaweli Authority,  
Walawa.
4. Garusinghage Gunasinghe,  
No. 1409,  
Viharagala,  
Suriyawewa.
5. Land Commissioner General,

Land Commissioner General's  
Department,  
No. 07,  
Gregory's Avenue,  
Colombo 07.

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA)**

**P. Padman Surasena J**

Counsel : J C Weliamuna for the Petitioner

D Embuldeniya for the 4th Respondent

Vikum de Abrew DSG for Hon. Attorney General.

Decided on: 2016 - 12 - 06

## JUDGMENT

### **P Padman Surasena J**

Petitioner in this proceedings claims,

- i. that he was issued with a permit under Section 19 (2) of the Land Development Ordinance on or around 2008-01-09
- ii. that at the instance of the 1<sup>st</sup> Respondent, the 4<sup>th</sup> Respondent was also issued a permit authorizing the 4<sup>th</sup> Respondent to occupy an extent of 20 perch block from the same land that was given to the petitioner by virtue of the permit marked **P 3**
- iii. that in terms of clause 115 of the orders made under the Land Development Ordinance (published in the land manual) a sub division of irrigated land cannot be less than 1 1/2 acres and hence it is not open for the Respondents to sub divide a small portion from his land to be given away to the 4<sup>th</sup> Respondent.

The Petitioner for the above reasons seeks a mandate in the nature of a writ of Certiorari to quash the permit issued to the 4<sup>th</sup> Respondent in

respect of the portion in the land depicted as lot A 1433 in the plan marked **P 8**.

The permit marked **P 3** clearly shows that what has been given to the Petitioner is only a portion of lot A 1433.

From the document marked and produced as **1R 2** and **1R 3** it could be clearly seen that the whole land is marked as lot A 1433 and that the extent given to the petitioner is only 0.790 hectares out of the total extent of 0.859 hectares.

It could also be seen from the documents marked and produced as **4 R1** which is the permit issued to the 4<sup>th</sup> Respondent, **4 R3** and **4 R4**, that the land that has been given to the 4<sup>th</sup> Respondent clearly is another portion of lot A 1433 which is in extent of 0.040 hectares.

It cannot be disputed in view of the documents filed by the petitioner as well as by the Respondents in particular **4 R2** dated 1986-03-18 that the 4<sup>th</sup> Respondent had also been in occupation in the land that had been given to him. Indeed in paragraph 5 of the petition, the Petitioner also admits that the 4<sup>th</sup> Respondent had been in occupation at the time the

Petitioner was handed over the possession of the said land. Thus this fact could be treated as an undisputed fact.

It could also be seen that clause 115 of the land manual refers to a sub division of a land given on a permit under the Land Development Ordinance and the said clause is not applicable to this instance as the land given to the 4<sup>th</sup> Respondent is not a sub division of the land given to the Petitioner. These two blocks of lands are completely separate lands which the petitioner and the 4<sup>th</sup> Respondent had been occupying and cultivating even prior to the year 1984.

In view of the above facts the position taken up by the Petitioner that a portion from his land has been given to the 4<sup>th</sup> Respondent by another permit is not factually correct.

In these circumstances we see no merit in this application. Hence we refuse it and proceed to dismiss the same. However we make no order for costs.

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**