

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 Writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 30 / 2009

Jayasinghage Benedict Nimal Perera

No. 51,
Tudella East,
Ja-ela.

And 11 others

PETITIONERS

-Vs-

1. Divisional Secretary
Divisional Secretariat,
Ja-ela.

2. Chief Engineer

(Provincial Constructions)

Western Province - North,

Ceylon Electricity Board,

No. 52,

2nd Floor,

Kandy Road,

Kiribathgoda.

3. Chief Engineer (Commercial)

Western Province - North,

Deputy General Manager's Office

(NWP)

280,

Kandy Road,

P O Box 28,

Kiribathgoda,

Kelaniya.

4. Commercial Engineer (Supply)

Western Province - North,

Deputy General Manager's Office

(NWP)

280,

Kandy Road,
P O Box 28,
Kiribathgoda,
Kelaniya.

5. Electrical Engineer

Ceylon Electricity Board,
280,
Kandy Road,
P O Box 28,
Kiribathgoda,
Kelaniya.

6. Chairman

Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 02.

7. Ceylon Fresh Sea food Company

Limited,
Tudella,
Ja-ela.

8. Chief Engineer (Provincial
Excavations)
Western Province – North,
Ceylon Electricity Board,
No. 52,
2nd Floor,
Kandy Road,
Kiribathgoda.

RESPONDENTS

Before: **A H M D Nawaz J**

P. Padman Surasena J

Counsel : Uditha Egalahewa PC for the Petitioner

Wickum De Abrew, DSG for the 1st - 6th and 8th
Respondents

Faiz Musthapha PC with Shantha Jayawardena and D. De
Silva for the 7th Respondent

Inquiry on : 2017 - 01 - 09

Decided on : 2017 - 03 - 01

JUDGMENT**P Padman Surasena J**

Petitioners in the original petition dated 2009-01-18 have sought in the prayers,

- I. A writ of Certiorari to quash the decisions made by the 1st Respondents in the documents produced marked **P 7** and **P 16**;
- II. A writ of Certiorari to quash the decisions made by the 2nd Respondents in the documents produced marked **P 1** and **P 18**;
- III. A Writ of Mandamus to compel the 1st -6th and 8th Respondents to adhere to the decision of the Human Rights Commission produced marked **P 13**;
- IV. A Writ of Mandamus to compel the 1st – 6th and 8th Respondents to take all necessary steps to, draw the proposed Volt 33,000 high tension electricity line to the 7th Respondent along the alternate road suggested by the Petitioners and the Human Rights Commission and also a direction on the 1st – 6th and 8th Respondents, not to draw the said proposed high tension electricity line along the Tudella East – Kudahakapola Road.

The document marked **P 7** is a letter dated 2008-02-19 written by the Divisional Secretary of Ja-ela, addressed to the Commercial Engineer of Ceylon Electricity Board. The document produced marked **P 16** is a letter dated January, 2009 written by the Divisional Secretary of Ja-ela addressed to the Electricity Engineer of Ceylon Electricity Board.

The document produced marked **P 1** is a notice dated 2007-11-09, sent by Ceylon Electricity Board.

When this case was taken up on 2011-10-18 this court had directed the Government Agent to appoint a Divisional Secretary other than the Divisional Secretary who made the impugned order in this case to hold an inquiry and arrive at a decision. The said order further states as follows;

".....The Government Agent is further directed to appoint the inquirer within 6 weeks from the receipt of the order. Additionally, the Government Agent is also informed to direct the inquirer to conclude the inquiry and communicate the decision within 3 months after the appointment of the inquirer until then the impugned decision contained in documents P 7 and P16 are quashed."

Consequent to the above order a fresh inquiry was held by the Divisional Secretary of Gampaha who was appointed for the said purpose. The said inquiry report dated 2012-02-23 has been submitted to this court.

In view of the submissions made by the parties with regard to the question whether the said order of this court made by Justice Rohini Marasinghe dated 2011-10-18 is a final order or not, this court on 2015-10-07 had held as follows:

"..... Therefore it is seen that the aforesaid subsequent decision had been made on a direction from this court. In that order made on 2011-10-18 it is clearly stated that the decisions stating in the documents **P 7** and **P 16** are quashed until the subsequent decision is made.

In view of the manner in which the said order is worded, no final order had been made in respect of the relief sought in the petition. Therefore, all three counsel agreed to have this matter re-argued....."

It is at this stage¹ that the learned counsel for the Petitioner, had moved to amend the petition, in view of the subsequent decision made by the

¹ On 2015-10-07.

Divisional Secretary of Gampaha. Respondents however had reserved their right to object to any amended petition being filed.

Subsequent to the above application, learned counsel for the Petitioner has filed the amended petition dated 2015-11-11 to which the learned counsel for the 7th Respondent had objected.² The 7th Respondent had thereafter filed a limited statement of objections dated 2015-12-15.³

It is for the purpose of deciding whether this court should permit the Petitioner to file the said amended petition dated 2015-11-11 that the instant inquiry was held by this court on 2017-01-09. This court heard submissions of learned counsel for all the parties in the course of the said inquiry.

Learned President's Counsel who appeared for the 7th Respondent drew the attention of this court to the prayers of the amended petition dated 2015-11-11 which is sought to be filed by the Petitioner.

It could be seen inter alia, that the following prayers;

² Vide journal entry dated 2015-11-13 in the docket.

³ Vide journal entry dated 2015-12-08 & 2015-12-16 in the docket.

Prayer (c) -issue mandate in the nature of a writ of certiorari quashing the purported orders issued by the 9th Respondent contained in **P 29**.

Prayer (d) -issue mandate in the nature of writ of Mandamus directing the 1st Respondent to enforce the decision contained in **P 9**.

Prayer (f) - grant interim relief restraining the 1st – 6th and 8th – 9th Respondents or any authorized officer or servants of the 1st – 6th and 8th – 9th Respondents acting in terms of the documents marked **P 14**, **P 26** and **P 29** until the final determination of this application,

are new prayers which have found their way into the amended petition.

The document marked **P 9** produced along with the amended petition had earlier been produced with the original petition marked **P 5**. It is a letter dated 2008-01-10.

The document referred to as **P 29** in the amended petition is the inquiry report dated 2012-02-23 made by the Divisional Secretary of Gampaha consequent to the aforesaid order dated 2011-10-18, of this court.

The Divisional Secretary of Gampaha has been made the 9th Respondent in the amended petition.

It should be observed at this stage that only 8 Respondents have been named in the original petition and that 9th and 10th Respondents in the amended petition are new additions.

It is clear from the above sequence of events, that what the Petitioner is seeking to challenge by the amended petition is the document produced marked **P 29** which is a decision made by the Divisional Secretary of Gampaha who is not a Respondent named in the original application pending before this Court. Further, Divisional Secretary of Gampaha had made that decision on 2012-02-23, a date which is later more than 3 years than the date of filing the petition in this case.

It is the view of this court that the decision, the Petitioner seeks to impugn by way of the amended petition filed in this proceedings, is a totally new decision which did not form part of the subject matter that was agitated by the Petitioner by his petition in this proceedings. Further, the said subsequent decision was a nonexistent at the time the Petitioner filed this application in this Court. Therefore the Petitioner is not entitled to

challenge that decision in this proceeding. That is exactly what the Petitioner is seeking to do through the amended petition he seeks to file at this moment.

In these circumstances and for the foregoing reasons this court is of the view that the move by the Petitioner to file an amended petition is misconceived in law. Thus, this Court decides to refuse accepting the amended petition that the Petitioner seeks to file.

JUDGE OF THE COURT OF APPEAL

A H M D Nawaz J

I agree,

JUDGE OF THE COURT OF APPEAL