

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

**C.A. Writ Application.**

**No. 371/2014**

A.R.M. Ratnayake,  
115, Tea Factory Road,  
Pallemakadawala,  
Hingula.

**Petitioner**

Vs.

1. The Commissioner General of Agrarian Development,  
Department of Agrarian Development,  
No.42, Sri Marcus Fernando Mawatha,  
Colombo 07.
  
2. K. Sumith Chandana,  
Assistant Commissioner,  
Agrarian Development District Office, Kegalle.

3. Z.A.M. Faisal  
Assistant Commissioner,  
Agrarian Development District  
Office, Kegalle.
4. A.R. M. Karunaratne,  
No. 134, Egodaepiliwala,  
Pepiliwala.

**Respondents**

**Before:** Vijith K. Malalgoda, P.C., J (P/CA) &  
S. Thurairaja, P.C., J.

✱

**Counsel** : Shantha Jayawardane for the Petitioner.  
Susantha Balapatabendi, D.S.G. for  
1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
D.M.G. Dissanayake for the 4<sup>th</sup> Respondent.

**Order on** : 15.03.2017.

\*\*\*\*\*

**Order**

**S. Thurairaja, P.C., J.**

The petitioner above named filed petition to quash an order made by the 4<sup>th</sup> Respondent under Section 90(1) of the Agrarian Development Act No. 46/2000 as amended by 46/2011. The parties filed objections and counter objections. The learned Deputy Solicitor General who appeared for

the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents raised preliminary objection, that the subject matter comes under the provincial list stipulated by the constitution of the Democratic Socialist Republic of Sri Lanka. Therefore this Court has no jurisdiction but the High Court of the province namely High Court of Kegalle. Parties filed written submissions on the said objection and moved to Court make a decision on the preliminary objection before proceed to the substantive issue.

The Counsel for the petitioner submits that the application was filed far back in October 2014 and pleadings are now completed, therefore referring the matter to the Provincial High Court will cause further delay and inconvenience to the petitioner, hence he is objecting for the transfer and submits that this Court also has jurisdiction to hear the matter. He quoted article 154(P) of the Constitution refers the cases of **Kaluarachchi Elen Nona Vs. Sunil Weerasinghe Commissioner General of Agrarian Services and others** in C.A. Writ 23/2013 decided on 10.06.2016. Supreme Court decision on **Wijesuriya V. Nimalawathie Wanigasinghe** S.C. Appeal No. 33/2007, **G.D. Kusumawathi and another Vs Assistant Commissioner of Agrarian Services** C.A. PHC 65/2018 (sic) decided on 26.05.2016.

The Counsel for the 4<sup>th</sup> Respondent also makes submissions and moves Court to dismiss the petition of the petitioner *in limine* and with costs.

The Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Respondent Senior D.S.G. submitted that the impugned order was made under the 90(1) of the Agrarian Development Ordinance and that matter comes under the provincial council list hence the High Court of said provincial has jurisdiction. Therefore this matter must be referred to the provincial High Court.

All parties agree that the said decision was made under Section 90(1) of the Agrarian Development Ordinances.

Section 16 of the Agrarian Development (Amendment) Act No. 46 of 2011 which reads as follows:

*"THE PRINCIPLE ENACTMENT IS HEREBY AMENDED BY THE SUBSTITUTION FOR THE WORDS "COURT OF APPEAL" WHEREEVER THOSE WORDS APPEAR IN THE PRINCIPLE ENACTMENT, OF THE WORDS "HIGH COURTS OF THE PROVINCE"*

(Emphasis added)

Section 90(1) of the Agrarian Development Ordinance reads as follows:

*"Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using threshing fields, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, **the commissioner general after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order** on such person cultivator or occupier requiring him to comply with such direction as maybe specified in such order necessary for the protection of such rights."*

(Emphasis added)

If a party is aggrieved by the decision made by the Commissioner under Section 90(1) he has to seek the competent jurisdiction under Section 90(3) of the Agrarian Development Ordinance which reads as follows:

*"An order under subsection (1) shall be binding on the person in respect of whom it is made until set aside by a **court of competent jurisdiction**"*

(Emphasis added)

Now I consider Article 154(P) of the constitution states as follows:-

- 154P.** (1) *There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.*
- (2) *The Chief Justice shall nominate, from among Judges of the High Court of Sri Lanka, such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.*
- (3) *Every such High Court shall-*
- (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*
  - (b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Court and Primary Courts within the Province;*
  - (c) exercise such other jurisdiction and powers as Parliament may, by law, provide.*
- (4) *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) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under –*

*(i) any law; or*

*(ii) any statutes made by the Provincial Council established for that Province,*

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

*(5) The judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.*

*(6) subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138.*

According to item number 9 of the 9<sup>th</sup> schedule deals with the subject of Agriculture and Agrarian Services as follows;

*9:1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, State land and plantation agriculture);*

*9:2 Rehabilitation and maintenance of minor irrigation works;*

*9:3 Agricultural research save and except institution designated as national agricultural research institutions.*

My brother, Justice Vijith Malalgoda, P.C. President of the Court of Appeal had decided in **Kaluarachchi Elen Nona Vs Sunil Weerasinghe and four others** (C.A. Writ 23/2013 decided on 10.06.2013) almost the identical matter that the provincial High Court and the Court of Appeal also has concurrent jurisdiction. I conquer his view.

The legislators brought the 13<sup>th</sup> amendment to provide easy excess of all central authorities and judiciary to the public, till then citizens of our country had come to Colombo for most of the things. Now it is available, close to their home, namely within the province. Once again, without valid reason taking matters which had been given to the provincial High Court to Court of Appeal, will not serve the purposes of the amendment to the Constitution. Therefore I am of view that these matters should be dealt by the provincial High Court, which is closed to their home. Most of the time, the relevant judges are sensitive on the issues of the said province. Considering all, this Court decides this matter should be heard and determine by the Provincial High Court holden at Kegalle. Therefore we decided to transfer this case to the Provincial High Court of Kegalle.

Registrar is hereby directed to transfer the case record and all connected papers to the Registrar of Provincial High Court.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda, P.C., J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL