

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

In the matter of an Appeal under Article
154 P (6) read with Article 138 of the
Constitution against judgment of
Provincial High Court exercising its writ
jurisdiction.

C A (PHC) / 145 / 2008

Provincial High Court (Kurunegala)

Case No. HCW 10 / 2006

Asantha Titus Kamburugamuwa,
Rathmalwetiya,
Boraluwewa.

PETITIONER - APPELLANT

-Vs-

Assistant Divisional Secretary,
Divisional Secretariat Office,
Kobeigane.

RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Niranjana De Silva with P Kolombage for the Petitioner -
Appellant.

Kanishka De Silva SSC for the Respondent-Respondent.

Argued on: 2017-06-28

Decided on : 2017 - 10 - 10

JUDGMENT**P Padman Surasena J**

Learned counsel for both Parties, when this case came up on 2017-06-28 before us, having made brief oral submissions, agreed to file written submissions.

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court holden in Kurunegala praying for a writ of Mandamus to compel the Respondent- Respondent (hereinafter sometimes referred to as the 2nd Respondent) to implement the recommendations contained in the letter dated 2005-08-15.

This letter was produced in the High Court marked ඉප 3.

According to the designation mentioned at the bottom of the said letter, the author thereof is stated to be the Deputy Chairman of the Western Provincial Council and also the Chairman of the Public Petitions Committee of the Western Provincial Council. The author by this letter had recommended to the Respondent that it would be appropriate to settle the

dispute referred therein, in the way suggested in the said letter. It is this recommendation that the Appellant had sought to implement in the High Court through a writ of Mandamus.

At the commencement of the argument of this case, learned Senior State Counsel submitted that this case is not maintainable in view of the judgment of the Supreme Court in the case of The Superintendent, Stafford Estate and two others V Solaimuthu Rasu¹.

The Supreme Court in that judgment had clearly held that the jurisdiction conferred on the Provincial High Courts under Article 154 P 4(b) does not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of state lands since they are not found in the Provincial Council List (List 1) to the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

Article 154 (P) 4(b) of the Constitution states that a Provincial High Court shall have jurisdiction to issue, according to law:

¹ 2013 (1) Sri. L. R. 25.

Orders in the nature of writs of Certiorari, Prohibition, Procedendo, Mandamus and quo Warranto against any persons exercising within the province, any power under:

- I. Any law; or
- II. Any statute made by the Provincial Council established for that province; in respect of any matter set out in the Provincial Council List.

Perusal of the learned Provincial High Court Judge shows that he has refused the application for a writ of Mandamus on the basis that there is no enforceable public duty on the part of the Respondent to carry out the recommendation made in the letter marked ଓପ 3.

Although the above view of the learned Provincial High Court Judge is correct, this Court has to stress the fact that the writ jurisdiction of the Provincial High Courts do not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of state

lands since they are not found in the Provincial Council List. Therefore, in any case the Provincial High Court could not have issued the writ sought by the Petitioner Appellant in this case.

For the foregoing reasons we decide to dismiss this appeal with costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL