

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

In the matter of an application for Writ of
Certiorari under Article 140 of the Constitution
of the Republic of Sri Lanka.

C.A. (WRIT) Application No. 298/17

Inquiry No.42 / 2003/ 06

Sirisena Jayasuriya

Kahandamodera, Ranna.

Petitioner

Vs

1. Chaminda Ekanayake
Assistant Commissioner of
Agrarian Development,
Agrarian Development Office,
Hambantota.
2. K.V.A Tilisena
Senior Agrarian Development
Office (Inquiry Officer)
Hambantota.
3. Anny Bason Wijethunga
Digawella, Kadewatta,
Denipitiya.
4. M.A.S Weerasinghe

Commissioner General of Agrarian
Development
No.42, Sir Marcus Fernando
Mawatha,
P.O. Box 537, Colombo 07.

Respondents

Before : L.T.B. Dehideniya J. (P/CA)
: Shiran Gooneratne J.

Counsel : W. Dayaratne PC with Rajaka Jayawardane for the
Petitioner.
: Rohan Sahabandu PC with Surekha Withanage for the 3rd
Respondent.
Ganga Wakistarachchi for the 1st, 2nd, and 4th
Respondents

Argued on : 20.10.2017

Decided on : 31.10.2017

L.T.B. Dehideniya J. (P/CA)

This is an application for a mandate in the nature of a writ of certiorari to quash the decision of the 1st Respondent made after an inquiry held under section 07(10) of the Agrarian Development Act No. 46 of 2000 amended by Act No. 46 of 2011. The Petitioner states that he is the tenant cultivator of the paddy land called "Salihamy Kumbura" where the landlady is the 3rd Respondent. The petitioner's contention is

that he was suffering from chronic diabetes and therefore he cultivated the paddy land through a hired labourer Lal and paid rent to the 3rd Respondent where she had accepted it without any objection. Thereafter she had complained to the 1st Respondent that the Petitioner had sublet the paddy land to the said Lal. The 1st Respondent, after holding an inquiry, decided that the paddy land was sublet to Lal without written sanction of the 3rd Respondent and ordered to evict the Petitioner from the paddy land. Being aggrieved by the said order the Petitioner instituted this application for a mandate in the nature of a writ of certiorari to quash the said decision.

The Petitioner does not complain about any irregularity in the presses of the inquiry. Neither the vires of the 1st Respondent to hold such inquiry nor any violation of the rules of natural justice in conducting the inquiry is challenged. The Petitioner's case is that the 1st Respondent had come into a wrong conclusion on the evidence presented, that the Petitioner has sublet the paddy land to Lal. The Petitioner is challenging the decision of the 1st Respondent on findings of facts by way of a prerogative writ.

Wade in Administrative Law ninth edition at page 260 says that;

“Although the contrast between the questions which do and do not go to jurisdiction was in principle clear-cut, it was softened by the Court's unwillingness to enter upon disputed questions of fact in proceedings for judicial review.”

At page 261 further said that;

“There had to be a ‘clear excess of jurisdiction’ without the trial of disputed facts denovo. Questions of law and questions of fact were therefore to be distinguished, as was explained by Devlin J:

Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the Court should determine it then and there. But where the dispute turns on a question of fact, about which there is id a conflict of evidence, the Court will generally decline to interfere.”

In the present case in hand there is no issue on jurisdiction. The Petitioner’s case is that the 1st Respondent’s finding that the paddy land was sublet to Lal was factually incorrect.

Wade at page 262 said that;

“And Lord Reid also once said:

If a Magistrate or any other tribunal has jurisdiction to enter on the inquiry and to decide a particular issue, and there is no irregularity in the procedure, he does not destroy his jurisdiction by reaching a wrong decision. If he has jurisdiction to go right he has jurisdiction to go wrong. Neither an error in fact nor an error in law will destroy his jurisdiction.

Sunil Coorey in Principles of Administrative Law in Sri Lanka 3rd edition vol.2 page 773 says that;

“But the resemblance ends there, for, whereas appellate jurisdiction usually includes the power to correct errors committed in the process of exercising power by substituting a correct order in place of the erroneous one, by issuing a certiorari the exercise of power could be only quashed for error of law, and it cannot be replaced by a correct order free of error.

In the present case, as I pointed out earlier, the Petitioner is not complaining of any error of law. He is totally resting his case on factual

matters. It is very clear when the grounds for the application described in the paragraph 21 of the Petition is considered. His argument is that he is the tenant cultivator and the finding that the paddy land was sublet is wrong. This is a factual matter that has to be decided on evidence. This Court do not inclined to enter in to a disputed fact in an application for a prerogative writ.

I refuse notice and dismiss the application.

President of the Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal