

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) / 105 / 2007

Provincial High Court of

Sabaragamuwa (Rathnapura)

Case No. HCR/WA 02 / 2006

1. A Gunerathna Menike

Uru Pelewwa,

Kuruwita.

2. Pahala Gamaralalage Nandawathie

Menike,

Uru Pelewwa,

Kuruwita.

RESPONDENT - APPELLANTS

-Vs-

1. Witharamalage Dhanarathna

Menike,

Tissa,

Uru Pelewwa,

Kuruwita.

PETITIONER RESPONDENT

2. W P Wijerathna,

Divisional Secretary,

Kuruwita.

3. W A Karunaratna,

Provincial Land Commissioner,

Sabaragamuwa Provincial Council,

New Town,

Rathnapura.

RESPONDENT - RESPONDENTS

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Rajitha Weerasinghe instructed by Achala Kulasuriya for the Respondent - Appellants.

Yadeesh Tennakoon instructed by A De Silva for the Petitioner Respondent.

Suranga Wimalasena SSC for the Respondent – Respondents.

Decided on : 2017 - 10 - 30

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-08-29 before us, agreed to have this case disposed of by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they would file.

The Petitioner- Respondent (hereinafter sometimes referred to as the 1st Respondent) had filed an application in the Provincial High Court holden at Rathnapura praying for a writ of certiorari to quash a decision taken by the 2nd Respondent Respondent accepting the 2nd Respondent - Appellant as the successor as nominated by the 1st Respondent - Appellant in terms of section 48 of the Land Development Ordinance.

Thus, the subject matter of this application as a whole is clearly pertaining to alienation of state lands.

At the outset, it must be noted that the Supreme Court in the case of The Superintendent, Stafford Estate and two others Vs. Solaimuthu Rasu¹ 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) in the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

Therefore, it is now settled law that the Provincial High Court does not possess jurisdiction to issue under Article 154 P 4(b) writs of this nature in respect of matters relating to alienation of state lands since such a subject is not found in the Provincial Council List (List 1) in the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

¹ 2013 (1) Sri. L. R. 25.

Perusal of the judgment of the learned Provincial High Court Judge shows that he has failed to consider this aspect of the jurisdiction of the Provincial High Court before he made the impugned order.

In these circumstances, it is clear that the Provincial High Court has pronounced the judgment in this case without having any jurisdiction in that regard.

Although the contesting parties had undertaken to file written submissions only the Appellant had tendered the written submission to this Court.

However, it is unfortunate that the learned counsel for the Appellant had not raised the above issue pertaining to the lack of jurisdiction. The arguments put forward by him are on other issues. Since this Court has held that the Provincial High Court in this case, had issued the impugned writ without jurisdiction, it would not be necessary for this Court to consider those other issues. Since the Respondent has not taken any interest to file written submissions on his behalf, this Court has to conclude that the Respondent has no valid ground to be placed before this Court.

For the foregoing reasons, this Court decides to set aside the judgment dated 2007-05-24 entered into by the learned Provincial High Court Judge. The application made to the Provincial High Court must stand refused and dismissed. No Cost is ordered.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL