

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

**In the matter of an application  
made under and in terms of Article  
138 read with Article 154 G (6) of  
the Constitution of The  
Democratic Socialist Republic of  
Sri Lanka**

Udawakage Gunadasa  
Wallaketiya, Opanayake.

**Petitioner**

**CA (PHC) No. 64/2010**

**Vs,**

1. Divisional Secretary  
Opanayake
2. Assistant Commissioner of  
Agrarian Services  
Ratnapura

**Respondents**

**And Now Between**

Udawakage Gunadasa  
Wallaketiya, Opanayake.

**Petitioner - Appellant**

**Vs,**

1. Divisional Secretary  
Opanayake
2. Assistant Commissioner of  
Agrarian Services  
Ratnapura

**Respondent - Respondents**

**Before : S. Devika de L. Tennekoon, J &  
S. Thuraija PC, J**

**Counsel : Shanil Rajapakse for the Petitioner - Appellant  
Chaya Sri Nammuni, SC for the Respondent- Respondents**

**Judgment on : 18<sup>th</sup> January 2018**

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### **Judgment**

#### **S. Thuraija PC J**

This is an appeal against an order made by the Judge of the Civil Appellate Court of Ratnapura. The petitioner had originally filed an application at the said high court above mentioned, seeking a writ of Certiorari and writ of Mandamus. The learned Judge after giving reasons dismissed the application of the petitioner with costs.

According to the available materials before this court the facts of the case are, the petitioner was granted a plot of land 11 acres 1 rood and 9 perches in the extent of 2 roods depicted a slot number 794 in FVP 201. The entire extent of the land belongs to the State. The said land was granted to the Petitioner under Jayabhoomi scheme. The petitioner claimed that he was cultivating the land from the water flowing from the natural springs in the said land. The 1<sup>st</sup> respondent is the Divisional Secretary of Opanayake and the second Respondent is the Assistant Commissioner of Agrarian Services, Ratnapura. It is alleged that the 1<sup>st</sup> Respondent had disrupted the water supply by constructing a water tank above the petitioner's land, and a writ of Certiorari was sought to quash the decision of constructing the said decision. A writ of Mandamus was sought to compel the respondents to provide the petitioner with uninterrupted water supply for his paddy field.

When the matter was taken up for argument at the High Court, it was observed that both parties were made to discuss a settlement in this matter. When it failed, it was proceeded to inquiry and a judgment was delivered.

It is the content of the learned high court judge that a material document namely 1V3, was not submitted by the Petitioner and it was suppressed. The document was written by the petitioner to the 1<sup>st</sup> Respondent. In the said letter he had consented for the project with the condition that he gets water supply.

Considering the available materials before the high court, we note the following materials with concern: The supply of water to the to the cultivation of paddy field of the petitioner is important. In the meantime, the tank was built to supply drinking water to the villagers in that area. The court has to evaluate the benefit of one person opposed to the basic right of drinking water of several residents of the village. Further it was observed with concern that the petitioner was granted 2roods of State Land by the said Jayabhoomi programme. When the officers, of the respondents visited the area to survey, it was found that the petitioner was occupying lots A, B, C, D, E, G, I and J. That, it is obvious the petitioner is in need of massive amount of water to feed the entire area, than he is entitled.

When the matter was before this court, we also requested the respondents to provide the petitioner with relief, but the petitioner was not agreeable to the proposals of the respondents. Initially the petitioner wanted water supply in the volume of ¼ inches pipe line. It is found the respondents had provided water supply in 1 ½ inches pipe line. Petitioner being unsatisfied, complains that he wants more from the bottom of the tank.

The question arise here is whether the Petitioner is entitled to make an application to the Provincial High Court. Because the subject matter to the application namely Planning of water resources falls within the concurrent list. Therefore, an application under Article 154 P will not be applicable. Since this matter was concluded at the High Court, we proceed to consider the judgment of the said court.

The Project of constructing a water tank is now concluded and the drinking water supply is now in action. Further the petitioner was well aware of the said water project. 1V3 clearly shows that the petitioner was not only aware but also given consent to the project. Considering these factors, the decision of the learned high court judge is reasonable and well founded, we have no reason to interfere with the said decision.

The petitioner seeking a writ of Mandamus, was refused by the judge of the high court. We perused the petition filed at the high court as well as in this court. There, he had sought a writ of Mandamus to direct the respondent to supply 'adequate' water. It should be noted that the 'adequate' water is ambiguous. He had not defined the volume of water he needs. Further as per the deed of grant he will be entitled to possess the land in an extent of 2 roods. He had illegally captured a larger portion of land and seeking water from the tank which is now a major source to supply drinking water to the villagers. The question arise here is whether the petitioner has a statutory right to get water supply for the land above mentioned. Therefore, the learned high court deciding not to grant a writ of mandamus is well founded.

The petitioner had submitted many new materials and facts in this appeal. We carefully considered all relevant materials, we find that there is no sufficient cause to issue a writ of Certiorari and a writ of Mandamus. Therefore, we dismiss the appeal.

The learned judge of the provincial high court is correct in ordering the costs. We affirm the said decision and order the petitioner to pay the cost to the 1<sup>st</sup> Respondent the Divisional Secretary. We fix the cost as Rupees 52500/- (Rupees Fifty-two thousand and five hundred)

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

**S. Devika de L. Tennekoon, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**