

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) / 150 / 2011

Provincial High Court of

Southern Province (Matara)

Case No. SP/HCCA/MA/Writ/ 16 / 2010

Wijewickrama Kadawatha Gam

Jayathissa,

No 14,

Sri Saddathissa Mawatha,

Walgama,

Matara.

PETITIONER - APPELLANT

-Vs-

1. Divisional Secretary,
Divisional Secretariat,
Pasgoda.

1B. P Gallage,
Divisional Secretary,
Divisional Secretariat,
Pasgoda.

2. P B Ruwan Pathirana,
Deputy Land Commissioner.
Gabadaweediya,
Matara.

3. Wijewickrama Kadawatha Gamage

Charlis,

Udumullawattaa,

Maragala,

Kirilipona.

4. Wijewickrama Kadawatha Gamage

Roshan Chamara,

Udumullawatta,

Maragala,

Kirilipona.

5. Saman S Jayawardena,

Additional Land Registrar,

Office of Land Registry,

Matara.

6. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P/CA)

K. K. Wickremasinghe J

Counsel; Rohan Sahabandu PC for the Petitioner - Appellant.

Zuhri Zain SSC for the Respondents.

Argued on : 2017 - 11 - 07

Decided on : 2018 - 02 - 21

JUDGMENT

P Padman Surasena J (P/CA)

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court of Southern

Province holden at Matara praying for a writ of certiorari to quash a decision taken by the 1st Respondent – Respondent (hereinafter sometimes referred to as the 1st Respondent) naming the 3rd Respondent – Respondent (hereinafter sometimes referred to as the 3rd Respondent) as the successor to the relevant permit. The said application had also sought a writ of mandamus to compel the 1st Respondent-Respondent to issue a permit to the Appellant under the provisions of the Land Development Ordinance, in respect of the same land. This is so stated in prayers of the application submitted to the Provincial High Court.

Perusal of the averments in the application filed before the Provincial High Court shows clearly that the expectation of the Respondents from the said proceedings before the Provincial High Court had been to get a state land allocated to the Respondents in terms of the provisions of the existing laws pertaining to alienation of state lands. Thus, this application is clearly with regard to something pertaining to alienation of state lands.

It is the conclusion of the learned Provincial High Court Judge that the Provincial High Court has no jurisdiction to issue writs on a matter, which does not fall within the scope of the Provincial Council List (List 1)

At the commencement of the argument of this case, learned Senior State Counsel brought to the notice of this Court that this position of law has now been decided by the Supreme Court in the case of The Superintendent, Stafford Estate and two others Vs. 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) in the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

Thus, 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.

The judgment pronounced by the Provincial High Court in this case is also on the same line. Therefore, this Court proceeds to dismiss this appeal with costs as the Supreme Court has already decided the point of law sought to be canvassed in this case.

Appeal is dismissed.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL