IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal to Court of Appeal against a judgment of Provincial High Court exercising its writ jurisdiction.

C A (PHC) 184 / 2008

Provincial High Court of

North Western Province (Kurunegala)

Case No. H.C.A 43 / 98

1. S M Punchi Banda
2. H M Leelawathie
3. E M Punchi Menika **(deceased)**

3A. M R Murial **(substituted on 2014-11-07)**

4. H M Karunaratne
5. H M Somasiri

All of Pahala Ekalawa,

Deegalla.

PETITIONER - APPELLANTS

1. D M P B Dissanayake,

   Agrarian Services Inquiry Officer,

   Agrarian Services District Office,

   Kandy Road,

   Kurunegala.

2. Agrarian Services Review Board,

   Agrarian Services District Office,

   Kandy Road,

   Kurunegala.

3. H M Edward Camilus Fernando,

   Pahala Ekalawa,

   Deegalla.

4. Assistant Commissioner of Agrarian Services,

   Agrarian Services District Office,

   Kandy Road,

   Kurunegala.

   RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P / C A)

K K Wickremasinghe J

Counsel; J C Weliamuna PC with Senma Abeysundara for the Petitioner - Appellants.

Buddhika Gamage for the 3rd Respondent - Respondent.

Indula Rathnayake SC for the 1st, 2nd and 4th Respondent - Petitioners.

Argued on : 2017-10-31

Decided on : 2018 - 03 - 16

JUDGMENT

P Padman Surasena J

Learned counsel for both Parties, when the argument of this case was concluded on 2017-10-31 before this Court, agreed to file in the registry by 2017-12-12, written submissions setting out the respective positions they took up in the course of the said argument.[1] Learned counsel for the 1st,2nd and 4th Respondents - Respondents(hereinafter sometimes referred to as the 1st and 2nd 4th Respondents respectively) has thereafter filed his written submissions. However, the learned counsel for the Petitioner - Appellants (hereinafter sometimes referred to as the Appellants) has failed to tender any written submissions for the consideration of this Court up until now.

[1] Vide journal entry dated 2017-10-31.

Thus, this Court regrettably note that it has been deprived of the opportunity by the Appellant himself to properly appraise the arguments that were put forward by him in Court. Therefore, this Court is left only with the written submissions filed by the Respondents in addition to the submissions made by counsel in Court.

Appellants in the application filed before the Provincial High Court had prayed

i. For a writ of certiorari and prohibition to quash the decision contained in the documents marked **P 4 A** and **P 4 B**
ii. For a Writ of mandamus to compel the 1st and 2nd Respondents not to enforce the said decision.

The decision contained in the document marked **P 4 B** is a decision made by the Agrarian services inquiring officer on 29th March 1996 subsequent to an inquiry held under section 5 (3) of the Agrarian Services Act No. 58 of 1979 as amended by the Act No. 04 of 1991. The letter marked **P 4 A** is the letter by which the said decision has been communicated to the parties.

Learned counsel for the Appellant mainly relied on the 'register of landlords and cultivators' maintained at the Agrarian Services Office for the year 1980. According to the said register, the names of the Appellants have been entered as the landlords and the cultivators also. In other words, there is no tenant cultivator for the said land according to the said register.

However admittedly it was in the year 1989 that this register had been updated on a mere application by the Appellant without any inquiry. To the contrary, evidence led before the inquiring officer has clearly shown that the Appellant had forcibly taken possession of this paddy field. Other than the above register, the Appellants had not been able to produce any evidence before the inquiring officer to establish that they are entitled to any rights to the relevant paddy field. This court has perused the inquiry proceedings and finds no material in favour of the Appellants.

In the case of Council of Civil Service Unions and others Vs Minister for the Civil Service [2] (case relied upon by the learned State Counsel for the 1st , 2nd , and 4th Respondents in his written submissions) Lord Diplock classified the grounds for judicial review into 3 main categories in following terms.

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under 3 heads the grounds upon which the administrative action are subject to control by judicial review. The 1st ground I would call "illegality", the second "irrationality", and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community; but to

[2] 1984 03 A E R 935.

dispose of the instant case the three already well-established heads that I have mentioned will suffice. ..."[3]

Considering the submissions made before us by the learned counsel for the Appellants, it appeared that the Appellant's intention in this application is to indirectly attempt to canvass the correctness of the decision of the 1st Respondent as if this is an appeal against the said decision.

This Court observes that this Court in Browns Engineering (Pvt) Ltd. Vs Commissioner of Labor and others [4] has held that a relief by way of certiorari is available only if the public functionary has wholly or in part assumed a jurisdiction which it does not have or has exceeded such jurisdiction which it has or has acted contrary to the principles of natural justice or when its decision is eminently unreasonable or irrational or is guilt of a substantial error of law.

His Lordship Justice Jayasuriya has categorically stated in the above judgement that the remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order. As he has stated in that judgement "on an appeal the question is right or wrong on review the question is lawful or unlawful." Further, it would be relevant to reproduce here the following paragraph from the above judgment of His Lordship Justice Jayasuriya. It is as follows.

---

[3] At page 950.
[4] 1998 01 SRI LR 88.

" ... The system of judicial review is radically different from the system of appeals. When hearing an appeal, a court is concerned with the merits of the decision under appeal; when subjecting some administrative act or order to judicial review, the court is concerned with its legality. On an appeal, the question is right or wrong? On review the question is lawful or unlawful? ..." Judicial review is a fundamentally different operation to the exercise of appellate jurisdiction. A court on review is concerned only with the question whether the award under attack should be allowed to stand or not. – Vide Prof. H W R Wade on Administrative Law, 7th edition, pages 38 to 39. Thus, the object of this court upon judicial review is strictly to consider whether the whole or part of the award of compensation pronounced by the Commissioner of Labour is **lawful** or **unlawful**. This court ought not to exercise its appellate powers and jurisdiction when engaged in the exercise of its supervisory jurisdiction and judicial review over an award of compensation decreed by the Commissioner of Labour. ..."

In view of the settled legal positions set out above, this Court is not inclined to consider this case as an appeal against the said impugned decision. In any case, the Appellants have not satisfied this Court that even any grounds of that nature also exists in this case.

This Court observes that the procedure for such inquiry has been set out in section 5 of the Agrarian Services Act No. 58 of 1979 as amended. It is the view of this court that the inquiring officer has followed the correct

procedure in conducting this inquiry. In any case, the Appellants have not complained that the procedure followed by the inquiring officer is incorrect.

This Court also observes that maintaining of a register for the tenant cultivators and landlords is not a requirement under the Agrarian Services Act. This Court also observes that under section 2 of the Agrarian Services Act, even an oral agreement is sufficient to establish that a person is a tenant cultivator.

It is also interesting to note that the Appellants have appealed against the impugned decision of the 1st Respondent to the Agrarian Services Board of review. This Court observes that the Agrarian Services Board of review after considering the said appeal has affirmed the impugned order by the inquiring officer. The Appellants has not up until now challenged the said decision of the Agrarian Services Board of review (produced marked **P 6 B**). This confirms the fact that the Appellant in this application has attempted wrongfully to re agitate the inquiring officer's decision after they lost their appeal before the Agrarian Services Board of Review.

This Court also observes that the Appellants had not chosen to challenge the impugned order by the 1st Respondent at any time before the Agrarian Services Board of review dismissed their appeal. This clearly shows that the Appellant had not observed any illegality, any irrationality, or any procedural impropriety in the said order at any time before the Agrarian Services Board of review dismissed their appeal. This leads this Court to

think that the filing of the instant application by the Appellants has amounted to abuse of process of Court.

Another observation this Court makes in the application of the petitioner is that the Petitioners have prayed for a writ of mandamus to compel the respondents to refrain from doing an act. It is the view of this Court that the said prayer is misconceived in law.

An applicant in a writ application must come to court with clean hands; he or she cannot have a hidden agenda. The hidden agenda of the Appellant in the instant case is to do what they otherwise cannot do i.e. to re-agitate the dismissed appeal by Agrarian Services Board of Review.

Writ jurisdiction of Court is a discretionary jurisdiction. It is exercised at the discretion of Court. This has been clearly explained by Jayasuriya J in Jayaweera vs Assistant Commissioner of Agrarian Services Ratnapura and another [1986 (2) SLR 70] when he said ".... I hold that the Petitioner who is seeking relief in an application for the issue of a writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine...."

The Court when deciding whether to exercise its discretion is entitled to take the conduct of the Applicant into consideration.

For the foregoing reasons it is the view of this Court that the refusal by the Provincial High Court to grant the writ sought by the Appellant is justifiable.

Therefore, this Court decides to dismiss this application. The Appellants are directed to pay a cost of Rs.50, 000 to the Respondent.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL