

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

In the matter of an appeal to Court of  
appeal under Article 154 P (6) read with  
Article 138 of the Constitution against a  
judgment of Provincial High Court  
exercising its writ jurisdiction.

C A (PHC) / 73 / 2012

Provincial High Court of

Sabaragamuwa Province (Ratnapura)

Case No. W A 20 / 2010

Mawelage Amal Tharanga,

Mahawalathenna,

Imbulamura,

Balangoda.

**PETITIONER - APPELLANT**

-Vs-

1. E M Appuhamy,  
Mahawalathenna,  
Imbulamura,  
Balangoda.

2. Agrarian Development Officer,  
Agrarian Services Centre,  
Damahana,  
Depalamulla,  
Balangoda.

3. Assistant Commissioner Agrarian  
Development,  
Rathnapura

**RESPONDENT - RESPONDENTS**

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

**K K Wickremasinghe J**

Counsel; Sunil Abeyrathna with Shashira Gunathillaka for the Petitioner  
- Appellant.

Manohara Jayasinghe SC for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent-  
Respondents.

Argued on : 2017 - 07 - 26

Decided on : 2018 - 05 - 25

**JUDGMENT**

**P Padman Surasena J**

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court of the Sabaragamuwa Province holden in Ratnapura praying for a writ of Certiorari to quash the decision of the 2<sup>nd</sup> Respondent-Respondent

(hereinafter sometimes referred to as the 2<sup>nd</sup> Respondent) contained in the letter dated 2010-06-09. That is a letter by which the 3<sup>rd</sup> Respondent had informed the Appellant that the 1<sup>st</sup> Respondent is the tenant cultivator of the paddy field relevant to the dispute.

At the commencement of the argument of this case, learned State Counsel submitted that the Provincial High Court has no jurisdiction to grant a writ in the instant case even if the arguments on behalf of the Appellant succeeds. He cited the judgment of the Supreme Court in the case of Maithilee Pathmanjalee Wijesuriya Vs. Nimalawathie Wanigasinghe and two others<sup>1</sup>.

The case cited above is an appeal filed in the Supreme Court against a judgment of this Court holding that Commissioner General of Agrarian Development is not a person exercising any powers within the province and as such the Provincial High Court lacked the requisite jurisdiction to issue writs against such decisions.

The Supreme Court in that case stated as follows;

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<sup>1</sup> SC Appeal No. 33/2007, decided on 2008-06-26 (A copy of this judgment is at page 132 of the appeal brief).

"... The Commissioner General's order though acting upon a matter occurring in a province (as it must since all matters arise in some province or another), is merely an exercise of power in relation to such province. Such "island-wide" powers are appropriately the domain of the jurisdiction of the Appellate Courts with "island-wide" jurisdiction. .... "

The Supreme Court in that case, had proceeded to affirm the judgment of this Court.

Although the above case was cited before the learned Provincial High Court Judge, he has opted to rely on the judgment in the case of Madduma Bandara V Assistant Commissioner of Agrarian Development,<sup>2</sup> to hold that the Provincial High Court does have jurisdiction to issue the writs sought by the Appellant.

Indeed the perusal of the judgment in Maithilee Pathmanjalee Wijesuriya case, shows that her Ladyship and their Lordships who decided that case had not attempted to deviate from the conclusions of that judgment.

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<sup>2</sup> 2003 Sri. L.R. 80.

Since Madduma Bandara V Assisstant Commissioner of Agrarian Development,<sup>3</sup> is also a judgment of the Supreme Court, this Court cannot fault the learned Provincial High Court Judge in following that judgment. On the other hand, the order of the Provincial High Court on the preliminary objection had been delivered by it on 2012-02-01. The instant appeal has been filed after the final judgment pronounced by the Provincial High Court. The judgment of the Provincial High Court which is challenged in this appeal is the judgment delivered by it on 2012-05-03. In these circumstances it is the view of this Court that it should consider the merits of this appeal.

It is the finding by the learned Provincial High Court Judge that the Appellant had failed to tender before the Provincial High Court, certain material namely a copy of the affidavit he had tendered before the inquiring officer at the inquiry.

Perusal of the notes of inquiry reveals that both parties had undertaken to tender affidavits setting out their respective positions before the inquiring officer. This means that the above material should be available for the

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<sup>3</sup> 2003 Sri. L.R. 80.

Petitioner to tender before the Provincial High Court. It is after consideration of all relevant material that the 2<sup>nd</sup> Respondent had arrived at the impugned decision.

The Petitioner has failed to produce before the Provincial High Court, the said material despite the objection raised by the 1<sup>st</sup> Respondent regarding the failure to tender it. It was therefore the conclusion of the Provincial High Court that the Appellant had failed to prove that the decision made by the 2<sup>nd</sup> Respondent is an illegality.

In the case of Council of Civil Service Unions and others Vs Minister for the Civil Service <sup>4</sup> 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 1<sup>st</sup> 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*

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<sup>4</sup> 1984 03 A E R 935.

*of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice. ..."*<sup>5</sup>

In the case of Sirisena Cooray Vs. Tissa Dias Bandaranayaka and two others<sup>6</sup> the Supreme Court referring to the above case, stated as follows.

*" ... The grounds of judicial review were originally broadly classified as three-fold. The first ground is illegality; the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. The second is "irrationality" namely Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd. V Wednesbury Corporation. The third is "procedural impropriety". (Halsbury 4<sup>th</sup> ed., Vol 11 para 60). To these grounds a fourth may be added "proportionality" See Lord Diplock in CCSU V Minister for the Civil Service at 951. ... "*

Perusal of the material adduced before Court clearly shows that the Appellant has failed to satisfy Court that any of the above grounds for a writ of certiorari has been made out.

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<sup>5</sup> At page 950.

<sup>6</sup> 1999 (1) S L R 1.

Further, the Appellant has not explained as to why he could not provide the material that he is alleged to have not produced before the Provincial High Court along with his application.

Rule 3 (1) (a)<sup>7</sup> states as follows:

Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mere mortu or at the instance of any party, dismiss such application.

The Appellant has clearly breached the above rule also.

This Court is satisfied after perusal of the judgment of the learned Provincial High Court Judge that the conclusions arrived at and the reasons

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<sup>7</sup>Court of Appeal (Appellate Procedure) Rules 1990.

given thereto by him are in order and thus requires no intervention by this Court.

In these circumstances, this Court affirms the judgment of the learned Provincial High Court Judge dated 2012-05-03 and proceed to dismiss this appeal with costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**