

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

In the matter of an application for an injunction in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CA (INJ) Application No. 02/ 2018

1. G.L.C.L. Perera,
No. 10, 2nd Lane,
Agaradaguru Mawatha, Thudalla, Ja-Ela.
2. G.A.D.T. Perera,
No. 152, Delathura, Ja-Ela.

Petitioners

Vs.

1. Wattala Pradeshiya Sabha,
Head Office of the Pradeshiya Sabha,
Hekiththa, Hendala, Wattala.
2. Thiyagi Alwis,
Chairman,
Head Office of the Pradeshiya Sabha,
Hekiththa, Hendala, Wattala.
3. K.S.H. Irangani,
Secretary,
Head Office of the Pradeshiya Sabha,
Hekiththa, Hendala, Wattala.

4. Ishura Jayasekera,
Assistant Commissioner of Local
Government for Gampaha District,
Kachcheri Complex, Gampaha.

Respondents

Before: P. Padman Surasena, J / President of the Court of Appeal
Arjuna Obeyesekere, J

Counsel: Dr. Sunil Cooray with Nilanga Perera for the Petitioner.

Supported on: 13th July 2018

Decided on: 20th July 2018

Arjuna Obeyesekere, J

The Petitioners have filed this application seeking an interim injunction in terms of Article 143 of the Constitution.

Article 143 of the Constitution reads as follows:

“The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensue before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance”

The Petitioners are the owners of a land in extent of 3 roods 23.44 perches situated in Delathura. The Petitioners do not have an independent right of way to their land and have gained access to their land through the adjoining land owned by the 1st Respondent Wattala Pradeshiya Sabha. The complaint of the Petitioners to this Court relate to the construction by the 1st Respondent of a wall on the said land belonging to the 1st Respondent, which the Petitioners claim would obstruct their gate and their access to the main road.

Section 214 of the Pradeshiya Sabha Act No. 15 of 1987, as amended specifies that no action shall be instituted against any Pradeshiya Sabha for anything done or intended to be done under the powers conferred by the said Act, until the expiration of one month next after notice in writing shall have been given to the Pradeshiya Sabha.

It is in this factual background that the Petitioners are seeking an injunction in terms of Article 143 of the Constitution to restrain the Respondents from obstructing the right of way of the Petitioners, until such time it files action in a competent court upon the expiry of a period of one month from the date of the notice issued in terms of Section 214.

This Court is of the view that the power vested in it by Article 143 of the Constitution can only be exercised to prevent any irremediable mischief, before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance.

The Petitioners have admitted that the contractor employed by the 1st Respondent has already constructed the boundary wall obstructing the gate of the Petitioners. The Petitioners have further admitted that the construction of the boundary wall has been completed and that the Petitioners have already been obstructed from gaining access to their land.

Thus, the "irremediable mischief" that the Petitioners are seeking to prevent by seeking an injunction from this Court has already taken place. No useful purpose would be achieved and no benefit would accrue to the Petitioners by this Court granting the injunction prayed for. Thus, it would be futile for this Court to issue the injunction at this stage.

A party invoking the jurisdiction of this Court in terms of Article 143 of the Constitution is not entitled to an injunction as of right. When its jurisdiction is invoked, this Court will have to consider *inter alia* the merits of the application before deciding to exercise the power vested in it in terms of Article 143. The Petitioners have not satisfied this Court that they are entitled to or is in a position to prove before a Court of first instance any right of way. The Petitioners have also failed to satisfy this Court that the 1st Respondent Pradeshiya Sabha has no right to construct a wall on its own land.

The Petitioners have filed an additional affidavit by which they have complained that the Respondents are erecting structures for a playground. This Court is of the view that any further development by the Respondents would not affect the Petitioners as by their own admission, their right of way has already been

obstructed. Thus, this Court sees no urgency that requires this Court to issue an injunction.

In these circumstances, this Court is of the view that this not a fit case in which the jurisdiction conferred on this Court by Article 143 of the Constitution should be exercised. Accordingly, this Court decides to refuse this application and dismisses this application, without costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree

President of the Court of Appeal