

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALISTIC  
REPUBLIC OF SRI LANKA.**

In the matter of an application for mandates in the nature of Writs of Mandamus, in term of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Dr. Wanninayake Mudiyansele Ranhamige Ranbanda (deceased),  
Kottayawatta, Hulugalla, Nikaweratiya.
- 1A. Dr. Wanninayake Mudiyansele Ranbanda Jayathiake,  
Weda Niwasa, Kottayawatte, Hulugalla,  
Nikaweratiya.

**Substituted 1A Petitioner.**

**C. A. (Writ) No. 229/2013.**

2. Chandrasekera Jayarathne Muiyansele Wimalasena,  
Mahakirinda, Mahagirilla, Nikawaratiya.
3. Chandrasekera Jayarathne Mudiyansele Bandara,  
Mahakirinda, Mahagirilla, Nikaweratiya.
4. Chandrasekera Jayarathne Mudiyansele Gamini Chandrasekera, Mahakirinda,  
Mahagirilla, Nikaweratiya.
5. Chandrasekera Jayarathne Mudiyansele jayasena,  
Mahakirinda, Mahagirilla, Nikaweratiya.
6. Chandrasekera Jayaratne Mundiyansele Udeni Sagarika, Mahakirinda, Mahagirilla,  
Nikaweratiya.

7. Chandrasekera Jayaratne Mudiyansele  
Nadeeka Priyadarshini Mahakirinda,  
Mahagirilla, Nikaweratiya.
8. Adhikaree Mudiyansele Harath Bandara  
Ranmenika Mahakirinda, Mahagirilla,  
Nikaweratiya.
9. Thennakoon Mudiyansele Punchibandage  
Somawathee, Mahakirinda, Mahagirilla,  
Nikaweratiya.
10. Herath Mudiyansele Kapurubandage Dingiri  
Amma (deceased),  
Nikaweratiya Haraha Hulugalla,  
Kottiyawatta, Bogahayaya, Nikaweratiya.
11. Dissanayake Mudiyansele somawathee,  
sirisethagame, Hulawa.
12. Dissanayake Mudiyansele Kusumawathie,  
Kandegedera, Hulughalla.
13. Rasnayake Mudiyansele Punchiralage  
Makkamma, Ipolagame, Mahawa.
14. Wanninayake Mudiyansele Dingiri amma.  
Hulawa, Olupaliyawa, Mahagirilla,  
Nikaweratiya.
15. Herath Mudiyansele Wijesiri Herath,  
Mahakirinda, Mahagirilla, Nikaweratiya.  
President, Samagi Govi Sanvidhanaya,  
Kadawalagedera.

16. Wanninayake Mudiyansele Thilakeratne,  
Hulawa, Sirisethagame, Niikaweratiya,  
Secretary, Samagi Govi Sanvidanaya,  
Kadawalagedera.

17. Samagi Govi Sanidanaya, Kadawalagedera,  
Mahagirilla.

**PETITIONERS**

**Vs.**

1. P. Susantha Jayathilake,  
Divisional Secretary,  
Nikaweratiya,
2. W.M.C.K Wijekuruppu,  
Assistant Divisional Secretary,  
Nikaweratiya.

N.D. Pathirana,  
Assistant Divisional Secretary.  
Nikaweratiya.

**Substituted 2<sup>nd</sup> Respondent.**

3. M.A.S. Weerasinghe,  
Commissioner-General of Agrarian  
Development,  
Department of Agrarian Development,  
No. 42, Sri Marcus Fernando Mawatha,  
Colombo 07.
4. G.B. Ashoka Swarnalatha,  
Deputy Commissioner of Agrarian  
Development,  
Department of Agrarian Development, District  
office, Kandy Road, Kurunegala.
5. Wanninayake Mudiyansele Shantha Kumara  
Wanninayake,

Kandegedera Agricultural Research and Development Officer, Kandegedera.

6. Wanninayake Muiyanselage Dingiri Bandara, Chairman,  
Sinha Govi Sanvidahanaya, Kandegedera.
7. Wanninayake Mudiyanseilage Kiri Banda, Kandegedera, Hulugalla,  
Secretary Sinha Govi Sanvidhanaya, Kandegedera.
8. Sinha Govi Sanvidanaya,  
Kandegedera.
9. Hon. Nimal Siripala De Silva,  
Minister of Irrigation and water Resources Management,  
No. 500, T.B Jayah Mawatha,  
Colombo 10.  
Hon. Wijith Wijayamuni Zoysa,  
Minister of Irrigation,  
No.500, T.B Jayah Mawatha,  
Colombo 10.

**Substituted 9<sup>th</sup> Respondent.**

10. Eng. Badra Kamaladasa,  
Director General of Irrigation,  
Irrigation Department,  
No. 238, Baudhaloka Mawatha,  
Colombo 07.

Eng. Y. Abdul Majeed,  
Acting Director General of irrigation,  
Irrigation Department,  
No. 238, Baudhaloka Mawatha,  
Colombo 7.

**Substituted 10<sup>th</sup> Respondent.**

11. H.M.P Hitisekera,  
District Secretary,  
Kachcheri  
Kurunegala.

Gamini Ilangarathne,  
District Secretary,  
Kachcheri,  
Kurunegala.

**Substituted 11<sup>th</sup> Respondent.**

12. S.M.W. Fernando.  
Surveyor General,  
Survey Department of Sri Lanka, No. 150,  
Kirula Road, Narahenpita.

P.M.P. Udayakantha,  
Surveyor general.  
Survey Department of Sri Lanka, No. 150,  
Kirula Road, Narahenpita.

**Substituted 12<sup>th</sup> Respondent.**

13. Hon Attorney General.  
Attorney General's Department,  
Hulftsdorp Street, Colombo 12.

Before : E.A.G.R. Amarasekara, J.

Counsel: Sanjewa Jayawardana P.C. with Charitha Rupasinghe for the  
Petitioner.  
M. Jayasinghe S.C for the Respondents except 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup>  
Respondents.

Decided on : 2018.09.21.

**E.A.G.R. Amarasekara, J.**

This is an application filed by the Petitioners praying for Mandates in the nature of writs of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents have filed their statement of objections to the application filed by the Petitioners. Petitioners in turn have filed their counter Objections. However, these 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents did not take part in the argument taken up on 17.05.2018. They were neither present nor represented by a lawyer on that date. The learned counsel for the Petitioners made extensive oral submissions and has later on filed his written submissions in support of the petitioners' application.

Learned State Counsel who appeared for the other Respondents except for 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents did not object to the application of the petitioners and further, did not make any oral or written submissions.

The Petitioners are members of Samagi Govi Sanvidhanaya, resident in the Village of Kandegedera and Olupaliyawa. They earned their living by paddy cultivation in ancient paddy fields surrounding the Kotuaththawala tank.

The Petitioners' allegation is that as a result of the illegal activities of some on the other side of the tank, especially, the surreptitious lifting of its spill on the left side by 8<sup>th</sup> Respondent in collaboration with the 5<sup>th</sup> Respondent, caused a massive affectation to the petitioners and the rest of the villagers. Due to such illegal activities, the Petitioners complain that,

1. Flood water and Rain water accumulate on the Petitioners' side of the said tank.
2. The balanced distribution of the water volume to the opposite side was hindered, causing the tank overflowing in large volumes to the petitioners'

paddy fields destroying those paddy fields by inundation. To support the above, the Petitioners have tendered the Photographs marked as P7.

The Petitioners state that the spill ('Vana') is an integral part of the bund of a tank and is a natural outlet for excess water from the tank, which protects both the dam and the bund from the excessive pressure from the water. They also bring to the attention of this court that the spill also protects the surrounding paddy fields located at the higher elevation of the tank from inundation.

To establish that some of the officials who are made Respondents to the Petition have duties assigned to them by statutes, the Petitioners have brought this Court's attention to the following provisions of Law.

1. Section 83 of the Agrarian Development, Act No. 46 of 2000

The said section provides as Follows;

"1. The Commissioner- General may, if it appears to him that any person has-

- (a) Blocked up, obstructed or encroached upon or caused to be blocked up, obstructed or encroached upon, damaged or caused to be damaged, any irrigation channel, watercourse, bund, bank, reservation tank, tank-reach or irrigation reserve; or
- (b) Willfully or maliciously caused the waste of water conserved in any irrigation work; or
- (c) Without the prior written approval of the Commissioner-General carried out any cultivation in, or removed earth from or caused earth to be removed from, a tank, canal within the catchment area or from a minor irrigation channel, water course, bund, bank, reservation tank, dam, tank-reach or irrigation reserve,

make an order requiring such person to take such remedial measures as are specified in the order."

(Every person who fails to comply with an order made under subsection (1) is guilty of an offence under Section 83 (3) of the same act). Since the said tank is a reservation tank and further, the spill is a part of the bund to

the tank, the Petitioners point out that the Commissioner General of Agrarian Development can act under the aforesaid section. Furthermore, raising of the spill level blocks and obstructs the flow of water till it reaches the new level.

2. Section 65 of the Irrigation Ordines No. 32 of 1946 as amended.

This Section provides as follows;

- “(1) Where any person obstructs or encroaches upon any ela, channel, watercourse, or tank, or causes damage to any ela, channel, water course or tank or any irrigation structure connected to such ela, channel, water course or tank, it shall be lawful for the Government Agent, by notice in writing served on such person, to require him within such time as may be specified in the notice to remove or abate such obstruction or encroachment or to repair such damage.
- (2) If any person serve with a notice under subsection (1) refuses or neglects to comply with the requirements of such notice within the specified time, or if there is any doubt as to who is the proper person to be served with such notice, it shall be lawful for the Government Agent to cause such obstruction or encroachment to be forthwith removed or abated or such damage to be repaired; and for that purpose it shall be lawful for the Government Agent to enter any land or premises, with such workmen, instruments and things as may be necessary, and to proceed to do therein, or cause to be done, all such things as may be necessary for such removal or abatement or repair” { However these provisions has to be read together with the provisions of Transfer Of Powers( Divisional Secretaries), Act No.58 of 1992 which substituted the expression “ the Government Agent” by the expression “the Divisional Secretary”. Section 9 of the said Act No.58 of 1992 makes provisions to include an Assistant Divisional Secretary who is authorized by the Divisional Secretary within the expression of the Divisional Secretary.}



In support of their application the learned counsel for the Petitioner brought this court's attention to several documentations which in turn establish the inaction of the state functionaries with regard to the harm caused though they are vested with powers conferred upon them by the above quoted sections.

It must be noted that though the reliefs are sought against them, none of the state functionaries filed any objections or made any submissions to resist the petitioners' application. As submitted by the Petitioners, it appears that there is a tacit admission of their failure to do the duties as envisaged by law.

Since 2003, the Petitioners have been writing to many authorities, including the then President of the country, relevant ministers and government officials. (vide P11, P12, P14, P17, P20, P22, P28, P36, P39, P40 and P50 etc.). P52 dated 30.08.2012 appears to be the letter of demand sent through their lawyer to the District Secretary of Kurunegala with copies to all the relevant state functionaries.

In reply to the complaint made to His Excellency the President of the Country, the Secretary to the President had directed the Deputy Director of Irrigation, Kurunegala to conduct an inquiry and submit a report (vide P17 dated 06.04.2006 and P18 dated 05.05.2006).

Thereafter by document marked as P19 dated 22.06.2006, the Zonal Director of Irrigation, Kurunegala has replied to the Secretary to the President stating that no renovation/restoration had been made to the Kotuaththawala tank by the Irrigation Department. This indicates that the raising of the spill level was not done by the said authority.

By P20 dated 21.08.2006, Samagi Govi Sanvidhanaya, i.e., The Association of the Petitioners, has complained to the Additional Commissioner of Agrarian Services about the destruction caused by the raising of the spill level without consulting the Engineers and has requested to restore the spill level to the status quo ante.

By P22 dated 28.03.2007, again one of the Petitioners has complained to the Divisional Secretary, Kotawehera and requested to remedy the situation that has affected about 20 acres of paddy land.

By P23 written in March 2007, the Land Officer on behalf the Provincial Land Commissioner, in response to a letter written to him by the Secretary of the Petitioners' Govi Sanvidhanaya, has referred the matter to Agrarian Development Commissioner since, as per the said letter, it comes under the purview of that Department.

P24 dated 03.04 2007, is a letter written by the Deputy Director of Irrigation to Zonal Director of Irrigation, requesting him to expedite his report to be sent to the Presidential Secretariat.

P 25 dated 05.01.2010 is a letter written by the Deputy Commissioner of Agrarian Development through the Regional Engineer to the Senior Assistant Engineer with copies to some of the state officers including the Divisional Secretary. By this, he has asked the Senior Assistant Engineer to act without delay to solve the issue by demarcating the spill level according to a new survey.

The aforesaid letter marked P25 indicates that the Deputy Commissioner of Agrarian Development had recognized an issue that has to be solved by demarcating the spill level and furthermore, without delay.

P26 is a report addressed to the Divisional Secretary, Nikaweratiya by a licensed surveyor named L.H.S. Amaradasa, referring to a letter dated 23.02.2010, setting out details of a survey that he had done. This report establishes that;

- i. He did his survey using an old village plan
- ii. He laid the boundaries on the ground by fixing wooden pegs.
- iii. In certain areas he was not able to lay the common boundaries on the ground as the areas not belonging to the State were totally inundated.

Thus, the aforesaid P26 supports the petitioners' stance that private lands are inundated.

By <sup>P</sup>27 dated 03.05.2010, the Deputy Commissioner of Agrarian Development had written to the Irrigation Engineer, Nikaweratiya referring to the matters that had arisen with regard to the spill level. While referring to the complaint made by the 1<sup>st</sup> Petitioner, the aforesaid Deputy Commissioner had mentioned that it had been reported that this change of spill level was done by the office of the Irrigation Engineer, Nikaweratiya. The Deputy Commissioner had requested the aforesaid Irrigation Engineer to consider the basis on which the spill level was established and tender his recommendations.

P29 dated 07.07.2010 appears to be a reminder sent to the Irrigation Engineer, Nikaweratiya in relation to P27, but it should be noted that as far back as in 2006, by P19 dated 22.06.2006, with copies to the Agrarian Development Office, Zonal Director of Irrigation had communicated to Secretary to the President that this task of raising the spill level was not done by the Office of the Irrigation Engineer, Nikaweratiya. In such a backdrop the Deputy Commissioner of Agrarian Development should have been aware that the office of the Irrigation Engineer, Nikaweratiya had not been involved in the raising of the spill level, but even in 2010 he was writing and sending reminders to the same office of the Irrigation Engineer, Nikaweratiya. Though, in responding to the aforesaid letter, the Irrigation Engineer, Nikaweratiya had written to the Agrarian Development Office with copies to relevant Government Officers and interested parties (vide P30) informing them to be present by the Tank at 10.30 A.M. on 30.05.2010 for an inspection, by P31 dated 13.08.2010 he had again written back to the Deputy Commissioner Agrarian Development informing that his office had not been involved in the renovation done to the Kotuaththawala tank.

Thereafter, the Deputy Commissioner of Agrarian Development had written to the Regional Irrigation Engineer of Wariyapola requesting his recommendations (vide P32 dated 15.09.2015), and again he had sent a reminder in October (vide P33), but by P34 dated 01.11.2010 the Regional Engineer, Wariyapola has responded stating they did not have any file with regard to the matter in issue – i.e., the raising of the spill level.

Thereafter, by letter dated 21.02.2011 marked as P35, the Deputy Commissioner of Agrarian Development had written to the Director Wayamba Engineering

Department stating that the said Engineering Department of Wayamba had done the raising of spill level and fixing the spill level to solve the issue of inundation of private lands would be appropriate. He further had requested Director Wayamba Engineering to take steps to solve the problem. In this letter the said Deputy Commissioner of Agrarian Development states that the raising of the spill level had been done by Wayamba Engineering Department. Since the same officer had written to Irrigation Engineer, Nikaweratiya and Irrigation Engineer, Wariyapola (vide P27 and P 32) stating that it was reported that those offices had done the raising of the spill level, it is not clear how he came to know that it was done by the Wayamba Engineering office. However, it is quite surprising that the Deputy Commissioner of Agrarian development or his department was not aware who or which institution had done the raising of the spill level till he wrote P35 to Director Wayamba Engineering Department.

- a) Was the raising of spill level done secretly?
- b) Was there no proper co-ordination between the relevant government departments or officers during and after the renovation project (if any) of the said tank or;
- c) Is it because of the lackadaisical approach of the relevant officers due to some unknown reasons?

Whatever it may be, P35 confirms that;

1. The Deputy Commissioner of Agrarian Development was aware and had identified the problem caused by the raising of spill level.
2. It has to be remedied by establishing the spill levels in a manner that solves the inundation of private lands.
3. That Priority should be given to a speedy remedial measure.  
(Please see the contents of P35)

P38 dated 08.08.2011, a letter addressed to the Director Wayamba Engineering Department by Regional Engineer, Wariyapola reveals that;

1. Left spill level is higher than the right spill level by 250 mm.

2. The relevant paddy fields are at a lower level than the left spill level by between 50 mm to 500 mm.
3. As per the Village Plan relevant paddy fields have been identified as private lands and "Deniya".
4. By lowering the spill level of the left spill, the speed of the water flow can be enhanced to decrease the length of time of an inundation.

The contents of the aforesaid letter too confirm the difference between right and left spill levels as well as that the paddy fields were inundated. However, this letter with reference to the village Plan states that even at the time that the village plan was made, the said lands were inundated as those parts of paddy fields have been described therein as 'Deniya'

'Deniya' may be a term to describe a certain type of a low land but the photographs marked as P 7 show that the lands in questions are completely inundated. However, this letter further indicates that by lowering the spill level, it is possible to reduce the time interval of inundation that affects paddy fields. In other words this letter establishes that paddy fields are inundated due to the difference between spill levels. Even the letter marked P8 dated 21.03.2012 written by Regional Engineer, Wariyapola to Divisional Secretary, Nikaweratiya establishes that higher level of the left spill has caused the inundation exceeding the limits of the tank.

It should be noted that certain communications with regard to a survey had taken place and a survey was done prior to the aforesaid letter marked P8 – (vide P41, P42, P43, P44 and Annexure to P44.) As per the contents of the letter marked P44, it appears that even the Divisional Secretary, Nikaweratiya has identified that there is an issue to be solved. By P45 dated 28.03.2012, the Assistant Divisional Secretary, Nikaweratiya had written to the Deputy commissioner of Agrarian Development to fix the spill levels under the supervision of his department. Accordingly, the Deputy Commissioner of Agrarian Development has written to the Regional Engineer for technical assistance and the Regional Engineer has agreed to provide the technical assistance (vide P46 and P47 written in April 2012). P48 sheds light with regard to the solution to the issue. By that letter the Deputy Commissioner of Agrarian Development after considering the reports given to him by his Assistant Engineer informs the Divisional Secretary that, to avoid the

inundation of private lands, the spill level has to be lowered by 0.760 meters. This shows that after spending so many years and taking surveys and reports of the engineers, the relevant Authorities have come to a decision with regard to a solution by 25<sup>th</sup> April 2012.

Surprisingly, the same Deputy Commissioner of Agrarian Development, who wrote the aforesaid P48, has communicated to the Divisional Secretary of Nikaweratiya to delay the lowering of spill level - Vide P49 written in May 2012. The reason appears to be a request made by the 8<sup>th</sup> Respondent Sinha Govi Sanvidhanaya. It further appears, after spending about another 3 months, that the same office has communicated to the 8<sup>th</sup> Respondent to deposit survey fees for another survey. This Court observes even in P13, P27, P30, P32 written in 2005 and 2010 in relation to this matter, copies had been issued to said Sinha Govi Sanvidhanaya. Further, in P14, P20, P36 written in 2005, 2006 and 2011 on behalf Petitioners, there are references to the involvements of Sinha Govi Sanvidhanaya. The above communications indicate that relevant State officers were well aware about the involvement of Sinha Govi Sanvidhanaya or its relationship to or interest in the issue from the beginning. At the same time Sinha Govi Sanvidhanaya should have known the there were complaints made against the raising of the spill and the steps were taking to solve the problem.

If the 8<sup>th</sup> Respondent or its members wanted to present their grievances, if any, it had ample time from 2005. Even the state functionaries had enough time to inquire into any grievance of the 8<sup>th</sup> Respondent and its members.

On the other hand, the relevant State officials have not placed before this Court any grievance tendered by the 8<sup>th</sup> Respondent or its members before them. They have neither pleaded before this court that the raising of the spill was done with the approval of the relevant authorities.

In such a backdrop the recommendation to delay the lowering of the spill level in P 49 by the Deputy Commissioner of Agrarian Services, which is not compatible with his own findings in P48, is questionable.

The aforesaid circumstances impel this court to infer that the relevant authorities were either;

1. Biased towards Sinha Govi Sanvidhanaya or
2. Subjected to the influence of a powerful and intrusive hand, which was not revealed in these proceedings.

If not, it may be a classic instance of the lethargic, apathetic, lackadaisical approach of the relevant State officers in solving the problem and such indifference has caused the suffering of the Petitioners for such a long period giving undue advantage to the 8<sup>th</sup> Respondent and its members.

In their objection filed, the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents themselves have stated that members of their organization would be gravely prejudiced and a grave injustice would be caused to their families by the reliefs prayed for by the Petitioners. The 6<sup>th</sup> and 7<sup>th</sup> Respondents are the President and the Secretary of the 8<sup>th</sup> Respondent. As per the Petitioners, they have been actively involved in the matter forming the subject matter of this application. In such a situation, I do not think the preliminary objections with regard to making them, namely the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents, parties to this application hold any water.

The 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents in their objection have stated that the left spill level was increased on the directions given by the 1<sup>st</sup> to 4<sup>th</sup> Respondents but they do not submit any document containing such a direction. Neither have the 1<sup>st</sup> to 4<sup>th</sup> Respondents admitted such a direction given by them. Though the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondent complained of prejudices and injustices that may be caused by reducing the spill level or by granting reliefs as prayed for by the Petitioners, they do not describe how such reliefs cause prejudices and injustices to them.

On the other hand, raising of the spill level has already caused harm to the Petitioners. There is no material before this court that the raising of the spill level was done after an unbiased and impartial consideration <sup>given</sup> by the relevant authorities of the plight caused by such acts towards the petitioners. The

aforementioned facts establish that while knowing the solution and having the authority to solve it, the state functionaries were inactive in resolving it.

In such circumstances I take the view that this court must issue mandates in the nature of mandamus to compel the performances of duties enjoined by law.

Hence, I allow the application and issue writs of Mandamus as prayed for in prayers C, D, E, F, G and H of the Petition of this application.

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E. A.G.R. Amarasekara.

Judge of the court of appeal.