

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

In the matter of an application for revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Revision Application No:
CA (PHC) APN 155/2016

B.N. Rathnayake,
185/16A, Kumbiyangoda Road,
Kotuwegedara,
Matale.

Petitioner

P.H.C. Kandy Case No: **HC Writ**
50/2015

Vs.

1. W.M.P.K. Weerasekara,
Commissioner of Cooperative
Development and Registrar
(Central Province),
Department of Cooperative
Development of the Central
Province,
Ehelepola Kumarihamy Mawatha,
Bogambara,
Kandy.

2. S.M. Padmalatha Herath,
Assistant Commissioner of
Cooperative Development,
Kachcheriya Mawatha,
Matale.

3. Matale Multi-Purpose Cooperative
Society Ltd.,
No. 15, New Three Storied
Building,
Trincomalee Street,
Matale.

Respondents

AND NOW BETWEEN

Matale Multi-Purpose Cooperative
Society Ltd.,
No. 15, New Three Storied Building,
Trincomalee Street,
Matale.

3rd Respondent-Petitioner

Vs.

B.N. Rathnayake,
185/16A, Kumbiyangoda Road,
Kotuwegedara,
Matale.

Petitioner-Respondent

1. W.M.P.K. Weerasekara,
Commissioner of Cooperative
Development and Registrar
(Central Province),
Department of Cooperative
Development of the Central
Province,
Ehelepola Kumarihamy Mawatha,
Bogambara,
Kandy.

2. S.M. Padmalatha Herath,
Assistant Commissioner of
Cooperative Development,
Kachcheriya Mawatha,
Matale.

**1st and 2nd Respondent-
Respondents**

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J

COUNSEL : AAL Shantha Jayawardena with AAL
Chamara Nanayakkarawasam for the 3rd
Respondent –Petitioner
AAL W.D. Weeraratne for the Petitioner -
Respondent

ARGUED ON : 21.06.2018

WRITTEN SUBMISSIONS : The 3rd Respondent – Petitioner – On
10.08.2018
The Petitioner - Respondent – On
26.09.2018

DECIDED ON : 08.02.2019

K.K.WICKREMASINGHE,J.

The 3rd Respondent-Petitioner has filed this revision application seeking to set aside the order of the Learned High Court Judge of Provincial High Court of the Central Province holden in Kandy dated 02.11.2016 in Case No. Writ 50/2015.

Facts of the case:

The petitioner-respondent (hereinafter referred to as the 'petitioner-respondent') was holding the post of Chairman of the Regional Committee representative to the General Assembly and the post of Director of Matale Multi-Purpose Cooperative Society Ltd. The 3rd respondent-petitioner (hereinafter referred to as the 'petitioner') informed the petitioner-respondent by the letter dated 02.05.2014 that the Board of Directors of the cooperative society at its meeting held on 26.04.2014 had decided to temporarily remove the petitioner-respondent from the aforesaid posts. It was further informed that the petitioner-respondent had obtained membership contrary to Section 7(2) of the by-laws. Thereafter the petitioner-respondent tendered his explanation to the Board of Directors. But, the Board of Directors at its meeting held on 21.05.2014 rejected the said explanation. Therefore the petitioner-respondent requested the 1st respondent-respondent (hereinafter referred to as the '1st respondent-respondent') to set aside the said decision of the Board of Directors dated 21.05.2014. The 2nd respondent-respondent (hereinafter referred to as the '2nd respondent') thereafter informed the petitioner that the removal of the petitioner-respondent from the posts he held was illegal and contrary to law (Page 138 and 139 of brief). Thereafter, by the letter dated 01.09.2015 (P10) the 2nd respondent (Assistant Commissioner) informed the secretary of the regional society to convene a General Assembly of the regional society for the purpose of taking a decision.

However the Learned Counsel for the petitioner contended that a General Assembly meeting of the Regional Society has been called on 20.09.2015 in contravention of the provisions of the by-laws, without publishing a public notice. Further, a venue far away from the limits of the regional society had been selected for the said meeting. Thereafter some members of the regional society have complained to the 1st respondent-respondent to cancel the said meeting scheduled to be held and requested to hold a meeting within the limits of the Regional Society giving a public notice. (001 at page 156 of the brief) Thereafter, the 2nd respondent directed the secretary of the regional society not to hold the said General Assembly meeting as it has been called in contravention of the by-laws (the letter marked as 003 at the page 159 of the brief). Nevertheless the Regional Society held a meeting and approved the membership of the petitioner- respondent. Thereafter the 1st respondent-respondent made a decision under section 60(2) of the Cooperative Societies Statute of the Central Provincial Council, No. 10 of 1990 holding that the petitioner- respondent could be recruited as a new member (Page 171 of the brief).

Subsequently, the petitioner- respondent filed an application in the Provincial High Court of the Central Province holden in Kandy seeking a writ of Mandamus directing the petitioner and the 1st and 2nd respondents-respondents to reinstate the petitioner- respondent in the offices and posts he held in the Cooperative Society.

The Learned High Court Judge, by the judgment dated 02.11.2016, granted a writ of Mandamus reinstating the petitioner- respondent in the office and posts he held. Being aggrieved by the said decision the petitioner preferred a revision application to this Court.

The Learned Counsel for the petitioner- respondent contended that the petitioner, without exercising his right of appeal, has preferred this revision application and

the petitioner has not furnished any exceptional circumstances as to why he opted not to exercise his constitutional rights.

The Learned Counsel for the petitioner has submitted that after instituting this application, the petitioner also lodged a notice of appeal seeking to appeal against the said judgment. However, since this Court issued notice in this revision application and was possessed of the matter, the petitioner did not file a petition of appeal in order to avoid multiplicity of litigation.

The Learned Counsel for the petitioner contended that the judgment of the Provincial High Court is *ex facie* wrong for the following reasons and therefore the petitioner is entitled to invoke the revisionary jurisdiction even though a right of appeal exists from the said judgment;

- i) The Provincial High Court failed to appreciate that the petitioner-respondent had not challenged the decision made under section 60(2) of the Cooperative Societies Statute of the central Provincial Council, No. 10 of 1990, which is a final decision.
- ii) The provincial High Court has not given reasons for its judgment.

We observe that in terms of section 60(2) of the Cooperative Societies Statute, the commissioner is empowered to take a decision in respect of a dispute pertaining to the election of an office bearer or the validity of the membership of a member and such a decision is final.

The Learned Counsel for the petitioner contended that petitioner-respondent instituted the writ application subsequent to the decision of the commissioner under section 60(2) but did not seek to challenge the said decision made under section 60(2) of the Cooperative Societies statute of the Central Provincial Council No. 10 of 1990. The petitioner-respondent instituted the writ application directly

seeking only a writ of Mandamus while the said decision made under section 60(2) remaining operative and final.

Accordingly we are of the view that the Learned High Court Judge erred in issuing a writ of Mandamus as prayed for by the petitioner- respondent in the absence of a prayer by the petitioner- respondent to quash the decision dated 15.12.2015 made by the Commissioner of Cooperative Development and Registrar of Cooperative Societies. Therefore we set aside the order of the Learned High Court Judge of Provincial High Court of the Central Province holden in Kandy dated 02.11.2016 in Case No. Writ 50/2015.

Accordingly the revision application is allowed.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J

I agree,

JUDGE OF THE COURT OF APPEAL