

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

Ven. Amugoda Somaratana,  
Viharadhipathi,  
Jayasumanarama Maha  
Viharaya, Amugoda.  
Petitioner

**CASE NO: CA/WRIT/219/2016**

Vs.

1. Commissioner General of  
Agrarian Development,  
No. 42, Sir Marcus Fernando  
Mawatha,  
Colombo 7.
  2. Attorney General,  
Hulftsdrop,  
Colombo 12.
- Respondents

Before: Mahinda Samayawardhena, J.  
Counsel: Bimal Rajapakse for the Petitioner.  
Manohara Jayasinghe, S.S.C. for the Respondents.  
(No written submissions were filed on behalf of the  
Respondents.)

Decided on: 14.06.2019

Mahinda Samayawardhena, J.

The petitioner, a Viharadhipathi of a temple, filed this application seeking to quash the order dated 04.05.2016 made by the Commissioner General of Agrarian Development under section 90(1) of the Agrarian Development Act, No.46 of 2000, as amended, whereby the petitioner was directed to reopen the agricultural road used by the farmers to have access to their paddy fields—*Hirikumbura Kidali Yaya*. After the case was filed, with the consent of the learned counsel for the petitioner, a fresh inquiry was held by the Commissioner General and made a detailed fresh order dated 15.05.2017. However no application has been made on behalf of the petitioner amending the original relief.

The position taken up by the petitioner before this Court is that such an agricultural road was non-existent across the temple land and the neighbourhood farmers gained access to their respective paddy fields along the ridge (*niyara*).

When I read the evidence of the petitioner priest (88 years of age at that time) given at the inquiry before the Commissioner General, it appears to me that the position of the petitioner at that time was that there was no motorable road across the temple through which land master tractors were taken by the farmers to gain access to their paddy fields.

This assertion has been proved untrue at the inquiry where several farmers have given convincing evidence to say the said road which had been using by them for long time for agricultural purposes was obstructed by the petitioner priest since lately.

The main contention of the learned counsel for the petitioner is that there is no cogent evidence to establish a servitude and also there is an alternative road (as stated by farmer Damayanthi at the inquiry) to go to the paddy fields.

When I read the evidence of the said farmer Damayanthi, it is seen that she has not clearly admitted that there is an alternative road. Instead, in the order of the Commissioner dated 15.05.2017, it has been stated that the petitioner priest never showed an alternative road, and the road which the priest told was used by the farmers, i.e. through the ridge (*niyara*), cannot be used to take land master tractors to the paddy fields for their agricultural purposes.

In the backdrop of the aforementioned contention of the learned Counsel for the petitioner, let me consider what is expected by the legislature from the Commissioner General in making the order.

The question in this case revolves around some complaints made around 17 farmers to the Commissioner General about obstructing an agricultural road. Their complaint seems to be that because of the closure of the road they could not cultivate the paddy fields for two seasons as they could not take land master tractors to the paddy fields for agricultural purposes.

In section 101 of the Act, which is the interpretation section, “agricultural road” has been given a broader interpretation. It reads as follows:

*“agricultural road” means a road used to transport agricultural crops or to transport the harvest or to drive or transport animals, or to transport agricultural equipment*

*and machinery or for the purposes of supplying agricultural services or for any other agricultural activity and includes a road used for the purpose of gaining access to agricultural land and includes a road which prior to this date had been used for any of the purposes stated above.*

Section 90(1) of the Act under which the Commissioner General made the order reads as follows:

*Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner-General after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order on such person, cultivator or occupier requiring him to comply with such directions as may be specified in such order necessary for the protection of such rights:*

*Provided that an order under this section shall not be made for the eviction of any person from such agricultural land:*

*Provided further that an order issued under subsection (1) shall not prejudice the right, title or interest of such person, cultivator or occupier to such land, crop or livestock in respect of which such order is made.*

Section 90(3) reads as follows:

*An order under subsection (1) shall be binding on the person in respect of whom it is made until set aside by a court of competent jurisdiction.*

Leaving alone the other sections of the Act, when the second proviso to section 90(1) read with 90(3), it appears to me that, the Commissioner General is expected to make a provisional order which will not prejudice the substantive rights of the person or persons concerned.

Further, according to section 90(1), the test is whether the interference to the right will result in damage or loss of crop or livestock.

Same section provides for an occupier to make such complaint to the Commissioner General, and according to section 101, occupier means the person for the lime being entitled to the use and occupation of agricultural land.

That shows the provisional nature of the order expected to be made by the Commissioner General.

Hence I am unable to accept the argument of the learned Counsel for the petitioner that a servitude right of access over temple land was not strictly proved by the farmers at the inquiry.

When I read the inquiry notes, it is seen that such a high-handed position was never taken up by the Attorney-at-Law who appeared for the petitioner priest at the inquiry before the Commissioner General.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal