

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

A.K. Jagoda,
Nawala,
Nakiyadeniya.

Respondent-Petitioner-Appellant

C.A. Case No: **CA/PHC/156/2015**

PHC Galle Case No:

HC Rev 60/2014

-Vs-

1. Ravi Prasad Kalupahana,
Assistant Agrarian Development
Commissioner,
Agrarian Development Department,
Labudoowa,
Akmeemana.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Applicant-Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : Nilantha Kumarage for the Respondent-Petitioner-Appellant.

Awanthi Weerakoon, SC for the Applicant-Respondent-Respondent.

Written Submissions: By the Applicant-Respondent-Respondent on 29/01/2019

By the Respondent-Petitioner-Appellant on 31/05/2019

Argued on : 23/05/2019

Judgment on : 25/06/2019

A.L. Shiran Gooneratne J.

The 1st Applicant-Respondent, The Commissioner of Agrarian Development, (Respondent) filed action against the Petitioner-Appellant (Appellant) in terms of Section 33(3) of the Agrarian Development Act No. 46 of 2000 (Act), in the Magistrate's Court of Galle, for filling a paddy land of approximate extent of 60 perches, in part of a land extent of 2 Acres, as described in the schedule attached to the affidavit, in violation of Section 33(1) of the Act, marked X2. The learned Magistrate by order dated 22/05/2014, issued an order restraining the Appellant from filling the land described in the said schedule.

Being aggrieved by the said order of the learned Magistrate, the Appellant preferred a revision application to the Provincial High Court of the Southern Province holden in Galle, seeking to set aside the said order. By order dated 13/08/2015, the learned High Court Judge affirmed the said order.

The Appellant is before this Court to have the said orders set aside on the basis that the,

- a) land which the Appellant was occupying is not a paddy land.
- b) Appellant is not the owner of the land described in the application filed in the Magistrate's Court.

When this application was taken up for argument, the learned Counsel for the Appellant relied on documents marked X5a, X5b, a Surveyor Report marked V6, the Police Inspection Report at page 147 of the brief and several photographs together with an affidavit filed by the Appellant in the Magistrate's Court.

According to the schedule to the Application filed in the Magistrate's Court in terms of Section 33(3) of the Act, the boundaries of the land owned by the Appellant is given as Beraliyaddara land to the North, Ela margaya to the East Lot. E of Beraliyaddara land to the South and Kadjugahaaddara Kumbura to the West.

The Appellant claims ownership of an allotment of land called Beraliyaddara Kumbura alias Owita as shown by Plan No. 594, consisting of allotments A, B and C marked X5a, an extent of 1 Acre 1 Rood and 18 Perches,

which the Appellant contends is not a paddy land but high land adjacent to a paddy land. According to Plan No. 594, to the North of the said land is Beraliyaddakanda and Beraliyaddara Kumbura. The allotment marked B, is identified as having rubber trees and allotments A and C are referred to as Owita. Plan No. 3878, marked X5b, also refers to the said land as Beraliyaddara Kumbura alias Owita.

According to Plan No. 594, marked X5a, and Plan No. 3878, marked X5b, the boundaries of the land owned by the Appellant are depicted as Beraliyaddakanda and Beraliyadde Kumbura to the North, Beraliyaddara Dola to the East and South and Beraliyaddara Kumbura to the West. According to the Surveyor Report marked V6, the Appellants land is identified as Beraliyaddara Kumbura alias Owita and also confirms the said allotments.

The contention of the Appellant is further supported by the folio of the Agricultural Land Register marked P1, where the reference to the boundaries of the land called Beraliyaddara Kumbura in extent of 2 acres is owned by a person named M.K.H. Muththettuwatta and not the Appellant.

The police inspection report at page 147 of the brief has referred to Allotment B, in extent of 60 perches as a paddy land uncultivated for a period of over 20 years. The said report further confirms that allotment A and C are not paddy lands.

In the aforesaid circumstances, it is clear that the Respondent has failed to correctly identify the land described in the schedule to the application made to the Magistrates Court to be that of the land owned by the Appellant.

Objecting to this application the learned Counsel for the Respondent submits that the powers of this Court to question proceedings of an enforcement Court is limited only to the legality of the enforcement process.

The object of the power of Revision as held in *Mariam Beebee v. Seyed Mohamed* 68 NLR 36 is the due administration of justice. *"The court will not hesitate to use its revisionary powers to give relief where a miscarriage of justice has occurred."* (*Somawathie v. Madawala and others* (1983) 2 SLR 15)

The learned Magistrate by order dated 22/05/2014, without considering the Appellants cause against the issue of an interim order has made order under Section 33(5) of the Act, confirming the said interim order and restraining the Appellant filling the land on the basis that in terms of Section 33(7), the Court is not competent to call for any evidence from the Respondent in support of this application.

Section 33(8) of the Act states,

"If after the inquiry the Magistrate is not satisfied that the person showing cause has lawful authority to fill the extent of paddy land or remove any soil therefrom or erect a structure thereon, he shall confirm

the interim order made under subsection (5) restraining such person and his servants and agents from doing any act in contravention of this section."

According to the said provision when the person on whom summons has been issued appears in Court and show cause against issuing of such an order the Court may proceed forthwith to inquire into the same or may set the case for inquiry on a later date. (Section 33(6)(b))

In the instant application, it is clear that the Court failed to consider the Appellants cause challenging the identity of the land described in the schedule to the said application before issuing the impugned order, which substantially questions the legality of the enforcement process.

For the above reasons, I set aside the order of the learned Magistrate of Galle, dated 22/05/2014, and the Order of the learned High Court Judge of the Provincial High Court of Galle dated 13/08/2015.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL