

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

*In the matter of an Appeal in terms of Section  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka*

C.A. Case No: **CA/PHC/57/2015**

H.C. Rathnapura Case No:

**HCR/WA 11/2013**

Kuruwita Pradeshiya Sabhawa,  
Kuruwita.

**1<sup>st</sup> Respondent-Appellant**

**-Vs-**

1. Kanapaddala Gamage Titus Thilakpriya  
Ranasinghe
  2. Weerasinghe Arachchilage Dhammika  
Sudarshani
- Both of  
Hunugaldeniya,  
Paradise,  
Kuruwita.

**Petitioner-Respondents**



High Court Judge of the Provincial High Court of Rathnapura, dated 02<sup>nd</sup> April 2015, permitting the Petitioner-Respondents to remove obstructions to the roadway existing upon the land depicted as Lot 3 in Plan No. 1848/04, dated 17.11.2004, made by S. Ramakrishnan, Licensed Surveyor, marked P2.

The Respondents submit that the land depicted as lot No. 3 of Plan No. 1848/04 has a 34 acre paddy field called "Korawakwila" and observed that the Appellant is in the process of constructing a roadway upon it to facilitate access to the said paddy land in spite of having many other access roads. However, it is admitted by the Respondents that occasionally the villagers were permitted to move their agricultural machinery over the said land but denied the existence of a servitude right.

Respondents received letter dated 12<sup>th</sup> September 2013, marked P7, where the Appellants stated that due to the existence of a thoroughfare upon the said land the fence erected obstructing its free passage should be removed, in default, action would be taken in terms of Section 59 of the Pradeshiya Sabhas Act.

According to 'P7' the Appellant informed the Respondents that, as per the Final Village Plan bearing No. 227, dated 3<sup>rd</sup> September 2012 (marked P6), the said road is a common road and the villagers have been using it for a considerable period of time.

The learned High Court Judge Rathnapura in his judgment stated that the Kuruwita Pradeshiya Sabha has not produced the relevant Gazette notification in

compliance with Section 24(5) of the Pradeshiya Sabhas Act with regard to the purported roadway and held that, unless there is a declared roadway, the Pradeshiya Sabha will not have any power to act under Section 59(1) of the Pradeshiya Sabhas Act to have any control of the said roadway.

When this matter was taken up for argument, both Counsels agreed to dispose of this application by way of written submissions.

The Respondents have argued that, Section 59 of the Pradeshiya Sabhas Act empowers only to remove obstructions of a public thoroughfare under its control and therefore, cannot act without lawful authority in constructing a roadway.

Section 59(1) of the Pradeshiya Sabhas Act, which provides for removal of obstructions or encroachments to public thoroughfares, states,

*“It shall be lawful for any Pradeshiya Sabha through any person authorized by the Pradeshiya Sabha in that behalf, to give orders verbally or by notice in writing, to any person obstructing or encroaching upon any thoroughfare under the control of the Pradeshiya Sabha forthwith to remove or abate the obstruction or encroachment; and if any person to whom such order is given refuses or neglects to comply therewith within a reasonable time, or, if there be any doubt as to who is the proper person to whom such order should be given after such notice has been affixed for a reasonable time to such obstruction*

*or encroachment, it shall be lawful for the Pradeshiya Sabha to cause any such obstruction or encroachment to be forthwith removed or abated.”*

It is observed that the Pradeshiya Sabha has power to remove obstructions to any thoroughfare “under the control of the Pradeshiya Sabha”. However this section emphasizes a pre-condition that the particular thoroughfare must be under the control of the Pradeshiya Sabha. As per document marked P7, it is revealed that, the 1<sup>st</sup> Respondent- Appellant identified the said road as a common road and not as a public thoroughfare existing under the control of the Pradeshiya Sabhas Act.

It is further observed that, since the said thoroughfare is not under the ‘control’ of the Pradeshiya Sabha, it cannot derive any authority under Section 59(1), even if there is an obstruction to it.

Section 23 of the said Act states that,

*“All thoroughfares within the Pradeshiya Sabha area, other than principal thoroughfares, except in so far as such thoroughfares are already vested by virtue of any other enactment, shall be deemed to be vested in the Pradeshiya Sabha of that area.”*

However, as per the requirement of Section 24 of the Act, such Pradeshiya Sabha within 3 months of its setting-up, must demarcate and prepare plans of the

thoroughfares. Thereafter, it must publish notices setting out such list that are within the area as per the provisions of Section 24(1), which states;

- (1) *It shall be the duty of every Pradeshiya Sabha within three years of the coming into force of these provisions or within such further period as may in the special circumstances of any case be allowed by the Minister*
  - (a) *to demarcate by permanent marks the limits of the roads and paths maintained by the Pradeshiya Sabha and cause to be prepared plans of all such roads and paths; and*
  - (b) *to cause notices to be published in the prescribed manner setting out a list of such roads and paths.*

Sub-sections (2)-(4) of Section 24 of the Act provides detailed steps to finalize such plans by the Pradeshiya Sabha, while making a proper mechanism to protect the rights of the victims affected by such demarcations and plans.

- (2) *Upon the publication of such notices any party claiming to be the owner of land from which such road or path has been demarcated shall within the time prescribed by such notice institute action in the appropriate court for establishing his title to such land.*
- (3) *After the expiration of a period of three months and before the expiration of a period of six months from the date on which the notice under Sub-section (1) is published in the Gazette, the Pradeshiya Sabha shall cause to*

*be published a notice in the prescribed manner setting out a list of all such roads and paths as set out in the notice published under Sub-section (1).*

*(a) excluding those roads and paths or portions of roads and paths in respect of which no final determination had been made in any action instituted as required by Sub-section (2); and*

*(b) with the necessary alterations made in the demarcation of the limits of such roads and paths and in such plans in respect of which a final determination had been made in any action instituted as required by Sub-section (2).*

*(4) Where a final determination has been made on any action instituted as required by Sub-section (2) after the publication of the notice under Sub-section (3), the Pradeshiya Sabha shall cause a notice, to be published in the prescribed manner, setting out a supplementary list of such roads and paths or portions of roads and paths. Before the publication of this notice the necessary alterations shall be made in the demarcation of the limits of the roads and paths and in the plans on the basis of the final determination made in respect of any action instituted as required by Sub-section (2).*

Therefore, according to Section 24 Sub-section (5), it is very clear that until and unless the Pradeshiya Sabha complies with the above sections, thoroughfares could not be deemed to be vested to the relevant Pradeshiya Sabha.

Section 24(5) states;

(5) *Upon the publication of such notice under sub-section (3) or (4), all such roads and paths or portions of such roads and paths as defined in such notices and depicted by such plans shall be deemed to be vested in the Pradeshiya Sabha.*

It is noted that there is no gazette notification published by the Appellant of complying with the said provisions of Section 24 of the Act regarding the existence of a thoroughfare upon the land depicted as Lot. 3 of the said Plan No. 1848/04, marked P2.

Although the 1<sup>st</sup> Respondent-Appellant contended that there is a roadway upon the said land, the Appellant has failed to provide any material to substantiate their position as to the existence of such roadway. We also observe that the said survey plan has not identified any thoroughfare over Lot 3. According to letter dated 24.05.2014, marked P11, S. Ramakrishnan, Licensed Surveyor has stated, "*I did not layout a road through Lot. 3 and there was no such road at the time of my survey*".

Accordingly, it is noted that there is no Gazette notification published in terms of Section 24(5) of the Act regarding the existence of a thoroughfare upon the land depicted as Lot. 3 of Plan No. 1848/04 and therefore, the Appellant cannot claim that the said thoroughfare is vested in the said Pradeshiya Sabha in terms of Section 59(1) of the Act.

In the circumstances I have no reason to disagree with the learned High Court Judge's analysis of the legality of letter marked P7, and the order granting relief to the Respondents as prayed for.

Accordingly, the Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**