

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of Writ of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution

1. Disapathi Lekamlage Piyadasa Prera,
No. 08, New Residencies,
Vimana Road,
Homagama.
2. Weliwita Maharalalage Bernard
Nandasena,
No. 343, Galkanda Road,
Kiriwaththuduwa.

Petitioners

C.A. Writ Application No.351/2014

Vs.

1. Mr. Sunil Weerasingha,
The Commissioner General of the
Agrarian Development,
Department of Agrarian
Development,
P.O. Box 537, Sir Marcus Fernando
Mawatha,
Colombo 07.
2. Mr. S. A. Jayaweera,
Assistant Commissioner of Agrarian
Development,

The office of the Assistant
Commissioner of Agrarian
Development,
No. 336, Ven. Baddegama
Wimalawansa Thero Mawatha,
Colombo 10.

3. Weliwita Maharalalage Tharanga
Sri Leelanath Rodrigo,
No. 343/1, Ambagashandiya,
Kiriwaththuduwa.
4. Weliwita Maharalalage Swarna
Hemamali Rodrigo,
No.343/1, Ambagas Handiya,
Kiriwaththuduwa.
5. Upul Nishantha Deraniyagala,
No. 336/1B, Pitipana North,
Homagama.

Respondents

Before : **Justice Janak De Silva**
Justice N. Bandula Karunarathna

Counsel : Chandrasiri Wanigapura for the Petitioners.
Canishka Witharana for 3rd, 4th and 5th Respondents.
Suranga Wimalasena, SSC for 1st and 2nd Respondents.

Argued and
Decided on : 15.10.2019.

Justice Janak De Silva

Learned Counsel for the Petitioner is heard.

He draws the attention of Court to document marked P2 which contains the inquiry proceedings into a complaint made by the 3rd, 4th and 5th Respondents. It is observed that the inquiry proceedings at P2, page 159 indicates that the inquiring officer had adjourned the inquiry proceedings after acknowledging that the Respondent party will further cross-examine the witness on the next date. However without proceeding with the inquiry the inquiring officer by P3 dated 29.09.2014 made order evicting the 2nd Petitioner from the land in dispute. He submits that there has been a breach of the rules of natural justice and further more he submits that in any event in terms of Section 90 of Act No.46 of 2000 an order of eviction cannot be made.

Learned Counsel for the 3rd, 4th and 5th Respondents acting in the best traditions of the Bar informs that he will not be contesting the validity of the order that has been made by P3 while reserving his rights in relation to any inquiry that may take place on the complaint in the future.

Court having considered the submissions, factual matters and the relevant legal provisions is of view that P3 is an order ultra vires the power of the inquiring officer. Accordingly, we issue a Writ of Certiorari quashing P3.

We further direct the 1st Respondent to appoint a new inquiring officer to continue the inquiry under reference from the point at which it was stopped as reflected at Page 159 of P2.

We further direct that the inquiry be completed within a period of two months from today. Court further requests the Hon. Attorney General to give necessary instructions on the legal position in relation to inquiries of this nature to the Commissioner General of Agrarian Development.

Subject to the foregoing application is allowed to the extent set out above. No costs.

JUDGE OF THE COURT OF APPEAL

Justice N. Bandula Karunaratna

I agree.

JUDGE OF THE COURT OF APPEAL

Lwm/-