

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

W.A.R. Don Dharmawardena,  
No. 84,  
Yatiyanthota Road,  
Awissawella.  
Petitioner

**CA CASE NO: CA/WRIT/406/2016**

Vs.

1. D.M. Nalinasekera,  
No.4/4,  
Galle Road,  
Dehiwala South,  
Dehiwala.
  2. J.A.P. Jagath Kumara,  
Galdora Road,  
Boralugama,  
Kosgama.
  3. Anusha Dewapriya,  
Assistant Commissioner of  
Agrarian Development,  
Kegalle.
- Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Cooray for the Petitioner.  
Harith De Mel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.  
Kanishka De Silva Balapatabandi, S.S.C., for  
the 3<sup>rd</sup> Respondent.

Decided on: 13.12.2019

Mahinda Samayawardhena, J.

This case has a chequered history.

The 1<sup>st</sup> and 2<sup>nd</sup> respondent farmers complained to the Commissioner of Agrarian Development against the petitioner regarding an obstruction to an agricultural road.

The Commissioner held an inquiry, and, in terms of section 90(1) of the Agrarian Development Act, No.46 of 2000, as amended, made the decision dated 19.03.2010, which is against the petitioner.

The petitioner filed writ application No. 475/2010 against the said decision, and this Court, by order dated 23.02.2012, whilst quashing that decision, further directed the Commissioner to reconsider the evidence led at the inquiry and make a fresh decision.

Pursuant to the order of this Court, the Commissioner held another inquiry and made a fresh decision dated 25.09.2013

again against the petitioner, directing the petitioner to remove obstructions of the agricultural road of 12 feet wide.

The petitioner again filed a writ application No. 75/2014 against the second decision, and this Court, by order dated 23.03.2016, quashed the said second decision predominantly on the basis that the Commissioner had taken fresh evidence in coming to that decision, which was not mandated by the first order of this Court.

The Commissioner then held a third inquiry and made the decision dated 07.11.2016, directing the petitioner to remove obstructions and reopen the agricultural road of 10 feet wide.

The petitioner has come before this Court for the third time by way of this writ application No. 406/2016 against the said third decision, mainly on the ground that no proper inquiry was held and no reasons were given for the said order.

The document marked "W6" tendered by the petitioner proves that the petitioner has participated in the third inquiry.

The document marked "R1" tendered by the Commissioner, together with his statement of objections, goes to prove that reasons have been given for the aforesaid third order.

The position taken up by the petitioner in the counter affidavit that "R1" is an afterthought conceived subsequent to the filing of this application in Court, cannot be investigated into in this writ application. There is no reason for the Commissioner to favour one party over the other. In fairness to the petitioner, I must say that the petitioner does not allege *mala fides* on the part of the Commissioner.

The petitioner further states that if the 10-foot-wide road is to be reopened, he has to uproot some rubber plantation. That cannot be a good excuse or defence in view of the documents marked "RR1", "RR2", "RR3" and "RR4" tendered by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, together with their statement of objections, whereby the petitioner has agreed to remove the rubber plantation when the necessity arises.

For the aforesaid reason, I take the view that the petitioner cannot succeed on merits.

After the aforesaid second decision of the Commissioner, the petitioner, as seen from "RR6" tendered by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, filed a civil case in the District Court against the 1<sup>st</sup> and 2<sup>nd</sup> respondents, with regard to the same dispute, seeking *inter alia* the relief that the said respondents have no right to use the disputed road. In the plaint filed in the District Court, the petitioner set out the history of the dispute together with the decisions made by the Commissioner of Agrarian Development in terms of section 90 of the Agrarian Development Act, and very correctly stated in paragraph 17 of the said plaint that the said orders made by the Commissioner against the petitioner are provisional orders, which have no bearing or effect to the substantive rights of the petitioner.

The petitioner has not mentioned this pending District Court case in his petition. Nor has he divulged it, at least verbally, when he successfully supported the application for interim relief *ex parte* preventing the implementation of the Commissioner's order, which is in force to date. This, in my view, is a grave suppression of material fact, which alone warrants dismissal of the petitioner's application *in limine*.

Until the substantive rights of the parties are decided by the District Court in the pending action referred to above, the decision of the Commissioner of Agrarian Development dated 07.11.2016 marked W7 shall be implemented.

I dismiss the application of the petitioner with costs.

Judge of the Court of Appeal

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