

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 Writs of Certiorari and Prohibition, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Galbokka Hewage Ranjith
Kabalana Road, "Bernad"
Kathaluwa, Ahangama.

CA (Writ) Application No :0434/2020

PETITIONER

Vs.

1. Diyagubadathuruge Upul Chandana,
"Upul Furnitures"
Kathalugoda Junction,
Kathaluwa,
Ahangama.
2. D. C. T. S. Prasanga
The Chief Engineer (Construction)
Southern
Province.
Ceylon Electricity Board,
Southern Provincial Office,
Matara Road, Galle.
3. Ceylon Electricity Board,
No 50,
Sir Chittampalam A. Gardiner Mawatha,
P. O.
Box 540, Colombo 02.
4. Public Utilities Commission of Sri Lanka,
Level 6, BOC Merchant Tower, 28,
St. Michael's Road, Colombo 03.
5. S. Rathnaweera,
The Secretary,

Pradeshiya Sabhawa,
Habaraduwa.

6. Pradeshiya Sabhawa,
Habaraduwa.
7. Senika Palliyaguruge,
Commissioner of Local Governments-
Southern Province,
Southern Provincial Council,
Dakshinapaya Ministry Complex,
Labuduwa, Galle.
8. Tharanga Wickramarathne.
Divisional Secretary,
Divisional Secretariat,
Habaraduwa.
9. Somarathna Widanapathirana.
District Secretary/Government Agent,
District Secretariat,
Galle.
10. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: **Arjuna Obeyesekere, J / President of the Court of Appeal
Mayadunne Corea, J**

Counsel: J. M. Wijebandara for the Petitioner
C. Ekanayake S. C. for 2nd, 3rd and 10th Respondents
Chandana Wijesuriya for the 1st Respondent

Supported on: 09th March, 2021

Written Submission: Tendered by the Petitioner on 22nd March 2021
Tendered by the 1st Respondent on 22nd March 2021
Tendered by the 2nd, 3rd and 10th Respondents on 23rd March 2021

Decided on: 3rd June, 2021

Mayadunne Corea, J.

The Petitioner alleges that the 8th Respondent had allowed the 3rd Respondent to lay a high-voltage electricity supply line over the Petitioner's land on an application made by the 1st Respondent. Being aggrieved by the said decision, the Petitioner has filed this application seeking *inter alia* a Writ of Certiorari to quash the said decision and a Writ of prohibition and a Writ of Mandamus. The facts of the case briefly are as follows;

Petitioner alleges that on the Northern Boundary of his land there is a road called "Weli Para" which is used by the inhabitants of houses. He further states that in or around May or June in the year 2020, the 1st Respondent had made a request to the 3rd Respondent to get a high-tension electricity connection and the Petitioner had received a notice from the Predecessor to the 2nd Respondent seeking way leave to draw an electricity line ¹. The Petitioner had submitted his objection to the said notice².

Thereafter, the 8th Respondent had held an inquiry on 28th July 2020 pertaining to the objections raised by the Petitioner. It was submitted that at the said inquiry the Petitioner had suggested an alternative route to install the proposed high-tension electricity line. The 2nd Respondent had objected to the said alternative route and had given reasons to the objection³. Thereafter, the 8th Respondent had given a determination to draw the electricity lines as stated in the document P5⁴.

Subsequently the Petitioner again objected to the decision of the 8th Respondent and sent another letter requesting not to draw the electricity lines over the Petitioner's land⁵ and has subsequently sent several letters to various authorities. The Learned State Counsel submitted that in view of the fact that the Petitioner had objected to the final determination of the Divisional Secretary the 2nd and 8th Respondent had sought the protection of police to install electric posts.⁶

It was further submitted on behalf of the Petitioner that subsequent to the decision of the 8th respondent the Petitioner had sent letters to various authorities including the 8th, 9th and 6th Respondents objecting to the drawing of the electricity lines on the Petitioner's land ⁷. Petitioner has also made an appeal to the 4th Respondent Commission against the determination of the 8th Respondent ⁸. Incidentally the 8th Respondent too had sent a letter

¹ P5 Notice of Way leave

² P6

³ Objection P7

⁴ P8 the decision of the Divisional Secretary.

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⁶ P10 & P11 Letter to the OIC of Ahangama Police by the Divisional Secretary of Habaraduwa and Chief Engineer of Southern Province CEB

⁷ P12 a - s

⁸ P14

the same day to the 4th Respondent Commission stating the steps she had taken pertaining to the inquiry into the objection of the Petitioner and her decision and the reasons for the said decision⁹ .

The Attorney-at-Law for the Petitioner submitted to this Court that they have not got a reply pertaining to the letters marked P14 and P15 from the 4th Respondent. This position was contradicted by the Learned State Counsel and the Counsel for the 1st Respondent.

The Petitioner thereafter has instituted a Land Action before the District Court of Galle bearing case no. 17763/L and among other things has sought for an injunction to restrain the Ceylon Electricity Board from entering his land to fix electricity posts and draw electricity lines. However, the Court had refused to grant an enjoining order but has issued only a notice of injunction.

On 12th of November 2020 the 3rd Respondent had come to install the electric post and draw the electric lines to which the Petitioner had again objected and it was submitted by the learned Counsel for the Petitioner that the police officers who were present had arrested the Petitioner and the electric post had been fixed.

The learned counsel for the petitioner further submitted that even if electric post and lines are drawn on the Petitioner's land, the 8th respondent had not decided to pay any compensation to the Petitioner.

Petitioner's main complaint to this Court is two folds, i.e:

1. The line that is to be drawn on the Petitioner's land is 70kV **high voltage** line which causes a danger.
2. The said lines should not be completed before the 4th Respondent gives a decision pertaining to the Petitioner's appeal against the decision of the Divisional Secretary.

The 1st Respondent filed a limited objection and submitted that the 1st Respondent as well as the inhabitants of the houses who uses the road along the Northern Boundary had challenged the Northern Boundary of the Petitioner which is the disputed strip of land along which the purported electricity lines are to be drawn. To substantiate this argument, it was submitted to this Court that the Petitioner had attached his title deed to the land as P1 but has failed to attach the plan bearing number 450 which depicts the land and its Northern Boundary but instead had attached a plan bearing number 2440 dated 05th October 2020 marked as P2. The Counsel for the 1st Respondent submitted that they have obtained the copy of the plan number 450 which is marked as 1R1 and as per the said plan the Northern Boundary of the Petitioner's land is demarcated with a Wire Fence. However, this Court observed that the document marked P2 by the Petitioner does not disclose a Wire Fence.

The counsel for the 1st Respondent also submitted that as per plan number 450 which is drawn into the scale of 1: 1000 the width of the road which is the Northern Boundary of the Petitioner's land is 10 ft and not 8ft as pleaded by the Petitioner. To demonstrate this, the 1st

⁹ P15

Responded had submitted the documents 1R1a and 1R1b. The Petitioner did not challenge these documents of the 1st Respondent.

The Learned Counsel for the 1st Respondent also stated that accordingly the electricity post will be erected on the edge of the road bordering the boundary of the Petitioner's land and the wires drawn along the road.

The Learned Counsel further submitted that the said line was not a high-tension line but only a line to supply electricity of 400 V. However, the 2nd and 3rd Respondents had informed that since it's a bulk electricity supply it would be a 70 KVA that would be drawn.

It was also submitted by the Counsel for the 1st Respondent as well as the Learned State Counsel that the 4th Respondent in fact had given a decision regarding the objection raised by the Petitioner as well as pertaining to the letters referred by the 8th Respondent marked as P14 and P15 respectively. The said replies to the two letters were marked as 1R8 and 1R9.

This Court has considered the submissions made by all parties and all the documents that has been tendered to this Court. This Court observes that although the Petitioner had tendered his title deed as P1, he had failed to attach the plan number 450 which is referred in the deed depicting the land along with the petition. What has been submitted is a plan which is dated 4th October 2020 which is very much subsequent to the date of his title deed marked as P2. This Court also observes that even though the original plan number 450 is drawn in 1996, the plan that had been tendered to this Court is dated 5th October 2020. As quite correctly submitted by the Counsel for the 1st Respondent the plan submitted by the Petitioner P2 does not depict a fence on the Northern Boundary but only a road way. However, the original plan number 450 clearly demarcates the Northern Boundary with a wire fence.

The Petitioner has failed to give an explanation to this court as to his failure to submit the original plan nor the discrepancy pertaining to missing boundary fence. The 1st Respondent also has attached photographs marked as 1R2 – 1R3e which shows the boundaries of the road where the posts are erected and the boundary stone that has been laid on the Petitioner's land. As per the document 1R2, the attention of the Court was drawn to the fact that the Northern Boundary of the Petitioner is not the edge of the road but instead there is a space between the edge of the road and Petitioner's boundary.

This court has also considered the documents 1R1a – 1R1c which shows the width of the road that bounds the Northern Boundary of the Petitioner's land. As per the scale of calculation which was not objected to by the Petitioner, this court is inclined to accept the Respondent's version of the width of the road as against the Petitioners' submission regarding the width. It is pertinent to note that the Counsel for the Petitioner at no time objected to the documents tendered by the Respondents, thereby he has not disputed the said documents or its contents.

It is evident as per the document marked X1 attached with the written submission of 2nd, 3rd and 10th Respondents, extraordinary gazette notification no 1975/44 dated 13th July 2016, the purported line that is to be drawn is not a high-voltage electricity line. As per the said gazette

the High -voltage is defined as **“High Voltage means a nominal voltage exceeding 33,000 Volts”**.

Throughout the submissions of the Counsel for the Petitioner and even in the petition, this Court was informed that the purported line to be drawn is a high-tension electricity line. In the prayer of the petition it is pleaded inter alia “to grant and issue a mandate in the nature of Writ of Certiorari quashing the decision made by the 8th Respondent approving the wayleave for high- tension electrical supply over and or on the Petitioner’s land”.

Accordingly, the objections taken on behalf of 2nd, 3rd and 10th Respondents pertaining to suppression of material facts and Uberrima Fides succeeds. As decided in the case of **Alponso Appuhamy vs Hettiarachchi** 77NLR 131, where the Court held that,

“When an application for a prerogative Writ or an injunction is made, it is the duty of the Petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts: the Petitioner must act with uberrima fides”

The Petitioner’s 2nd Complaint to this Court was that before the 4th Respondent had given a decision pertaining to the Petitioner’s appeal marked P14 and the 8th Respondent’s letter P15 the drawing of the electricity line should not be completed. However, as per the document marked 1R8 and 1R9 the 4th Respondent has given a decision confirming the 8th Respondent’s decision to draw the electricity lines. The Court observes that the said two letters are copied to the Petitioner. Therefore, the 2nd ground urged by the Petitioner before this Court also fails. In view of the above two letters this Court is of the view that the judgment **Ariyadasa Bandarigoda Vs. Ceylon Electricity Board and others bearing case no CA WRIT Application 444/11** cited by the Petitioner’s Counsel has no application to the instant case. This Court also observes that as per P5 the way leave notice, the proposed electricity line is to be drawn along the boundary of the road and what has been approved is the said proposal, with a minimum damage to the Petitioner’s Land. This Court also has considered the Documents 1R2 – 1R3e which shows the Northern Boundary of the Petitioner.

As stated earlier in the judgment and also as per document 1R4 a complaint signed by the villagers who uses the road, it appears that the Northern Boundary of the Petitioner’s Land is in dispute. In the petition as well as throughout, the Learned Counsel for the Petitioners submissions it was submitted that his main grievance is construction of a high-tension line and installation of posts in the Northern Boundary of his land. This Court observes that the proposed electricity line is to be drawn on the said disputed area.

As per the submissions of the learned Counsel for the 1st Respondent, it is apparent to this court that the ownership of the area on which the proposed electricity post are to be fixed and where the lines are to be drawn, is in dispute. It is trite Law that when facts are in dispute, judicial review is not available.

In the decided case of **Thajudeen Vs. Sri Lanka Tea Board and Another (1981) 2SLR 471** it was held *“where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct. Writ will not issue.”*

In the above circumstances, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal