

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

In the matter of an application under Article
140 of the Constitution for a mandate in the
nature of Writ of Mandamus.

Mrs. Malkanthi P. Gunawardena,
No: 16/1, Railway Avenue,
Kirillapone,
Colombo 05

PETITIONER

**Court of Appeal Case No:
CA/WRIT/151/2018**

Vs.

1. W. M. M. B. Weerasekara,
The Commissioner-General of Agrarian
Development (Acting),
The Department of Agrarian Development,
No. 42, Sri Marcus Fernando Mawatha,
Colombo 07.
2. G. D. A. Swarnalatha,
Deputy Commissioner of Agrarian
Development,
Agrarian Development District Office,
Kandy Road,
Kurunegala.
3. J. S. Edirisinghe,
Divisional Officer,
Agrarian Services Centre,
Pothuhera.

4. Cyril Premawardena
Assistant Commissioner of Agrarian
Development,
Agrarian Development District Office,
Kandy Road,
Kurunegala.
5. Venerable Meedeniye Piyarathana Thero
Sri Bodhi Rukkarama Viharaya,
Gammana, Pothuhera

RESPONDENTS

Before: C.P Kirtisinghe, J
Mayadunne Corea, J

Counsel: Aravinda Athurupara With Kamal Nissanka for the Petitioner
Chaya Sri Nammuni SSC for the 1 – 4th Respondents
W. Dayarathne for the 5th Respondent

Argued on: 29.07.2021

**Written
Submissions:** Tendered by the 5th Respondents on 12.10.2021
Tendered by the 1-4th Respondents 17.10.2019
Further tendered by the 1-4th Respondents on 11.02.2022
Tendered by the Petitioner on 04.11.2019

Decided on: 07.04.2022

Mayadunne Corea J

The facts of the case are briefly as follows, the Petitioner in 1965 became the owner of a paddy land by the name of Elhenpitiya Kumbura situated at Gammana, Pothuhera, in the Kurunegala District. There were two *pillewas* adjacent and annexed to the said paddy land Elhenpitiya Kumbura,, to which the Petitioner became entitled to by virtue of paternal inheritance. In or about 2012 the Petitioner had got a survey done and executed a deed of declaration confirming *inter alia* the said paternal inheritance.

The Petitioner states that as a result of official duties and her transfer to Colombo, she was not in a position to visit the said agricultural lands frequently and used hired labour to have the said paddy land cultivated. One such person engaged by the Petitioner as hired labour was A. M Ariyadasa. The said person and his wife Lalitha Kumari were said to be owners of the paddy land immediately adjacent to the Petitioner's said Elhenpitiya Kumbura on the South and South-West.

The Petitioner states that to access Elhenpitiya Kumbura and her said *Pillewa* from the public road one had to get onto a stretch of land depicted as Lot 1 in plan bearing 9399 which was purchased by the Petitioner in 2013 from the previous owner. The Petitioner states that in February 2015, the Petitioner came to know that the said Ariyadasa's wife, had some years previously illegally filled up a portion of the said Hendiweldeniya Kumbura in the aforesaid tract of fields and had constructed an unauthorized house thereon. The Petitioner states that later in or about February 2015, the said Ariyadasa and his wife Lalitha Kumari had transferred title to the said Hendiweldeniya Kumbura to one Anoma Kumari Ratnamala. Thereafter the said Anoma Kumari Ratnamala had gifted the said Hendiweldeniya Kumbura to the 5th Respondent and that the fence that was separating the Petitioner's *pillewa* from Lot 1 had been removed by the 5th Respondent who is now the current owner.

The Petitioner further states that by letter dated 06/04/2015 [PX3(A)] this action of the 5th Respondent had been brought to the attention of the 1st Respondent which was also copied to the 2nd Respondent. By this letter, their attention was drawn to the use of the said *pillewa* for non-agricultural purposes as a motorable gravel road, to gain access to the said unauthorized house, and also the possibility of infringement of her rights as the owner cultivator. By the letter dated 08/06/2015 (PX 8) the Petitioner had informed the 3rd Respondent that she was not complaining against the 5th Respondent but is seeking a clarification pertaining to the filling and construction of the roadway and whether it had been done with the approval of the 3rd Respondent. In reply, the 3rd Respondent by letter dated 12/06/2015 (PX 9) had informed that after a site inspection it had been found among other things that the use of the gravel road constructed over the said *pillewa* has become an obstruction to the Petitioner's cultivation rights.

The Petitioner filed this writ application and prays for the following relief:

- (1) Grant and issue a mandate in the nature of a writ of mandamus on any one or more of the 1st – 4th Respondents compelling them to perform, in the aforesaid circumstances, the public duty contemplated by Section 32 (1) (5) in the official version of the said Act and or by Section 90 (1) thereof***

Petitioner's complaint to Court

- Petitioner alleges that after several complaints stating that the *pillewa* owned by her and, used to go to her paddy field and the threshing floor had been illegally filled and a road constructed, 1st – 4th Respondents have failed to take steps under the Agrarian Development Act No 46 of 2000.

Thus, this application for a writ of Mandamus.

The Petitioner contends that she has got the title for the paddy field and the adjoining pillewa by way of deed marked as PX1A and PX1C. In support of this contention, Petitioner also had annexed a plan marked PX1B dated 16.12.2012, where the survey has been carried out on 26th October 2010. In the said plan the pillewa is clearly depicted. The Petitioner's contention is that the pillewa is an adjacent land to her paddy field which consists of the threshing floor, which under section 101 of the Agrarian Development Act No. 46 of 2000 falls within the definition of paddy land.

In 2015, three years after the plan was made, the Petitioner has become aware that a 12 ft wide motorable gravel road had been constructed by filling the said pillewa. The Petitioner's first complaint was that by this particular act, the pillewa has been used for non-agricultural purposes namely, to construct a motorable gravel road. The said gravel road has been constructed to gain access to a house which is alleged to have been constructed by illegally filling an adjoining paddy field to the Petitioner's land. Upon getting to know about this construction, the Petitioner has informed the Commissioner-General of The Department of Agrarian Development by her letter dated 06.04.2015 (PX3A) of the same. In the said letter, the Petitioner had stated that since she was having issues with her health, and due to her official duties, she was residing in Colombo, and as soon as she got to know about this filling of land in the pillewa she made a complaint. In the said letter, she has specifically said that no permission has been sought from her to fill the pillewa and requested the agrarian development Commissioner to institute an inquiry and to advise the Petitioner on the legal status of filling the pillewa.

The Deputy Commissioner of Agrarian Development office Kurunegala by letter dated 24.04.2015 had promptly instructed the Divisional Officer to submit a report with observations pertaining to this complaint (PX3B). Subsequently, another letter had been sent by the Assistant Commissioner of Agrarian Development Office (legal) to the Deputy Commissioner of Agrarian Development office Kurunegala dated 20.05.2015 whereby advice had been given to take appropriate action under Act No. 46 of 2000 (PX5) the said letter caption says as follows,

“පොතුහැර 905 ගමමන වසමෙ පිහිටි දොළුවෙ කුඹුර ගොඩ කර ඉදි කරන ලද නිවසකට ඇල්හේන්පිටිය කුඹුරට අනුබද්ධ පිල්ලුව හරහා වාහන ගාල් කිරීමට හැකි වන බිම තීරුවකට පාරක් වශයෙන් හිමිකම කීම”

However, in paragraph 2 of the said letter, the advice given is to take action pertaining to an illegally filled paddy field. The Agrarian Services Centre had issued notice on the 5th Respondent asking him to attend an inquiry regarding this complaint (PX6). There is no material to demonstrate whether the inquiry contemplated in PX6 had commenced or what transpired at the said inquiry. For whatever the reason, a further notice has been sent dated 03.06.2016 asking the 5th Respondent to be present for an inquiry (PX7).

The Divisional Officer of Agrarian Services Center Pothuhera had replied to the Petitioner by PX9 and informed her that as per the site inspection, he had found that there had been an illegal construction of a house constructed on Edivaldeniya kumbura and the said construction had taken place about 8 years prior, the same letter observes that by the construction of the road, the Petitioner's cultivating rights are obstructed. Paragraph 4 of the said letter PX9 states as follows,

“කරුණු එසේ හෙයින් ඔබගේ ආරවුලට යටත් පිල්ලුව හරහා වාහන ගාල් කිරීමට හැකි වන සේ බිම් තීරුවකට පාරක් වශයෙන් හිමිකම් කියන හා ඔබගේ වගා අයිතියට හානි වන බාධාවක් ඇති වී ඇති බවටත් අනාවරණය වූ කරුණු අනුව අදාළ ගැටලුවේ වර්තමාන විත්ති පාර්ශවය ලෙස හඳුනා ගත් මී දෙණියේ ප්‍රිය රතන හිමියන් අදාළ පරීක්ෂණයට කැඳ වූ බව වැඩි දුරටත් දන්වා සිටිමි.”

Thus, this letter establishes the fact that a roadway is built and by the said roadway, the Petitioner's cultivating rights have been affected.

However, this letter further alleges that the Petitioner has not been present for an inquiry, and as a result, the author of the letter is unable to give the advice sought by the Petitioner pertaining to the filling of the pillewa. In the reply letter, the Petitioner has explained her absence and stated that she had not been asked to come for the inquiry but had only been informed of the date of the inquiry. Further, she had clarified that her complaint was not pertaining to the paddy field but on the illegal filling of the pillewa which she alleged was a violation of the Agrarian Development Act.

The Divisional Officer of Pothuhera after a field visit had come to a finding that in the year 2006, a permanent house had been constructed by Lalitha Kumari without any prior permission of the Commissioner-General of Agrarian Development. The construction is on a paddy field and the said land and the house had been transferred to the 5th Respondent in 2015. This has been communicated by letter dated 30.06.2015 (PX13). The inspection had further revealed that the footpath that had been used, had been filled and converted to a roadway to be used to access the illegally constructed house. The letter goes on to state that there had been no legal action taken pertaining to these illegal acts of construction and the Divisional Officer has observed that the filled roadway had been used, to have access to the threshing floor and the pillewa. This report further establishes the parties involved in the illegal act. Thereafter several correspondences have been exchanged between the Petitioner and the Commissioner-General of the Department of Agrarian Development and several further inquiries have been held.

It is evident by the document marked PX23B that the Assistant Commissioner of the Agrarian Development had held another inquiry dated 10.08.2015 at the Kurunegala district office. The said inquiry had been attended by the Petitioner, the 5th Respondent, and a witness on behalf of the Petitioner. At the conclusion of the inquiry and the site inspection carried on 02.11.2015 a report with recommendations had been compiled. In the report, it is observed as follows,

“1. පොතුහැර කූරියමපොල මාර්ගයේ මීටර් 500 ක් පමණ දුරින් පිහිටි ගමමන ග්‍රාම නිලධාරී වසමේ ඉහත මාර්ගය ආසන්නයේ මෙම ඉඩම පිහිටා ඇත. ප්‍රධාන මාර්ගයේ සිට අනවසරයෙන්

ඉදි කළ බව සඳහන් නිවස කරාපැමිණිල්ලේ සඳහන් පිල්ලුවෙ කෙලවරෙන් ගමන් කළ මාර්ගයක සලකුණු ඇත. දැනට ඉදි කර ඇති නිවසෙහි කිසිවෙක් පදිංචි වී නැත. නිවස සහිත ඉඩමෙහි බහු වාර්ෂික බෝග වවා ඇත (පොල් සහ අඹ වැනි ගස්)

2. මෙම ස්ථානයේ වාහන ගාල් කිරීමක් සිදු කර නැති අතර පිල්ලුව යැයි සඳහන් කොටසෙහි පොල්, කොටට්ටබා සහ කෙසෙල් වැවී ඇත. කමත ලෙස සඳහන් භූමිය වසර කීපයක් භාවිතයට නොගැනීම නිසා කැලෑ වී ඇත.

3. තිබුණා යැයි ප්‍රකාශිත කමතට යාමට ඇති මාර්ගය මෙය වන අතර නිවසට යාමට මාර්ගයද මෙම මාර්ගයයි. කලක සිට මෙම මාර්ගය කුඹුරු යායට යාමට භාවිත කර ඇත. කුඹුරු යායට යාම සඳහා වෙනත් විකල්ප මාර්ග ඇතත් එම මාර්ග යන්ත්‍රසූත්‍ර ගෙන යාමට අපහසු බවක් පෙනේ”

As per the report, the Assistant Commissioner has recommended for legal action to be taken against all offenders who have violated the Agrarian Development Act No 46 of 2000. In view of the said inquiry report, the Commissioner-General of the Department of Agrarian Development by his letter dated 16.12.2015, had informed the Assistant Commissioner of Kurunegala that the said construction of the house and the roadway to the said house had been constructed without the written approval of the Agrarian Development Commissioner General and therefore to institute action under Act No 46 of 2000. The said letter states as follows,

“උක්ත කරුණ සමබන්ධව ඔබ විසින් මා වෙත එවන ලද ඔබේ අංක 5/2/45/01 හා 2015.11.04 දිනැති ලිපිය අනුව මෙම විෂයගත ඇදිවැල්දෙණිය කුඹුරේ ඉදි කරන ලද නිවස සහ නිවසට යාමට සකස් කරන ලද මාර්ගය මාගේ ලිඛිත අවසරයක් නොමැතිව ඉදි කර ඇති බවය.

එබැවින් මෙම අනවසර ඉදි කිරීම සමබන්දයෙන් 2011 අංක 46 දරණ ගොවිජන සංවර්ධන පනතින් සංශෝධිත 2000 අංක 46 දරණ ගොවිජන සංවර්ධන පනතේ විධිවිධාන පරිදි නීතිමය ක් රියා මාරග නොපමාව ගැනීමට කටයුතු කරන ලෙස කාරුනිකව දන්වමි.”

Thus, it is established that there is a violation of the provisions of the Agrarian Development Act, and the final recommendation is to take legal action against the unlawful construction. However, there is no observation or recommendation pertaining to the illegal filling of the road which was the grievance of the Petitioner.

Subsequent to this letter the Deputy Commissioner of Agrarian Development Kurunegala by letter dated 17.12.2015 had informed the Divisional Officer of the Agrarian Service Centre of Pothuhera to institute legal action against the unlawful construction (PX27). The Petitioner contended that by this time the Respondents have been concentrating on the illegal construction of the house in the adjoining field and had failed to consider further action pertaining to the illegal filling of the roadway which was the Petitioner’s grouse.

However, strangely thereafter, the same Deputy Commissioner who informed the Divisional Officer to institute legal action under the Act had written to the Commissioner-General of

Agrarian Development seeking advice as to the contemplated legal action (PX28). This was on the basis of the Divisional Officer's Report which had a finding mentioning that the illegal construction had been constructed about ten years prior to the inquiry.

This Court finds it strange for the Deputy Commissioner who previously had instructed a subordinate officer to act under the Agrarian Development Act No 46 of 2000, to seek advice from the Commissioner-General of agrarian development as to what legal action should be taken. It appears to this Court that by this time, the Respondents had been concentrating only on action against the illegal construction of the house, that they had completely failed to consider the Petitioners complaint of filling of the pillewa, which also contained the threshing floor.

This letter has been replied to by the Commissioner-General of agrarian development by the letter dated 05.04.2017 (PX32). Whereby the author had said that, due to the failure to take any action during the relevant period, steps could be taken under the Agrarian Development Act only if any new filling or construction is carried out.

While the Commissioner-General and the Assistant Commissioner of Agrarian Development had been corresponding in the way illustrated in the judgment, the Petitioner by her letter dated 29.09.2017 had informed the Commissioner-General of Agrarian Development to take legal action against the perpetrators of the illegal filling of the pillewa and further submitted that if no reply is received by her pertaining to this letter (P42) then she would consider such failure to reply as a refusal which would result in taking appropriate legal action. The Respondents didn't contest the receipt of the letter P42.

At the argument stage, the Petitioner submitted that the Commissioner-General had failed to reply to this letter thus there is an implied refusal to act under the statute.

The learned Counsel for the Respondents contended that the Respondents had taken action pertaining to the complaint of the Petitioner which is depicted in the documents that have been filed by the Petitioner herself. The learned Counsel's main contention was that by the said correspondence, the Respondents have acted within the statutory powers given under the Agrarian Development Act No. 46 of 2000. Therefore, they have validly discharged the public duty that was cast on them.

The Respondents took several objections to the petition namely;

- The Petitioner is guilty of laches as she had waited from 2006 to 2015 to report the illegal filing of the pillewa.
- The title to the pillewa is contested in a District Court case thus the Petitioner has no legal right to seek a mandamus.
- The Petitioner's first prayer should fail as the pillewa does not fall within the definition of paddy land.

This Court will consider these objections.

The learned Counsel also cited the case of **Rathnayake and other v C.D Perera and others (1982) 2 SLR 451** whereby it was held that mandamus would be available when a public officer who is entrusted to perform a public duty had refused to perform. But contended that in this instance the public officers had acted within their powers, pursuant to the Agrarian Development Act.

It is clear from the documents submitted to this Court especially the correspondence between the parties that no sooner the Petitioner had informed of her grievance and sought advice from the Commissioner-General of agrarian development, the Department of Agrarian Development had sprung into action, and commenced inquiries. But what we observe is that despite the Petitioner informing the provisions of the Act, that had been violated, the Respondents have failed to take steps pursuant to the Act to see a conclusion of the inquiry pursuant to the complaint.

Learned Counsel also cited **Credit Information Bureau of Sri Lanka v Messrs Jafferjee and Jafferjee PVT Ltd (2005) 1 SLR 89** where the Court formulated a test that should be satisfied by a Petitioner when seeking relief by way of writ jurisdiction. There the Courts held;

- (a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought (R v Barnstaple Justices exp. Carder. The foundation of mandamus is the existence of a legal right (Napier ex parte)
- (b) The right to be enforced must be a “Public Right” and the duty sought to be enforced must be of a public nature.
- (c) The legal right to compel must reside in the applicant himself (R v Lewisham Union)
- (d) The application must be made in good faith and not for an indirect purpose”

This Court finds that in this instance, the Petitioner who is the aggrieved owner cultivator has a legal right to seek redress from 1st - 4th Respondents against an illegal filling of a pillewa if it violates the provisions of the Act. The answer to this question is available on the findings of the several inquiries that had been conducted by the Respondents themselves. One such finding as reflected in PX9 is that there is an illegal construction of a house and illegal filling of the pillewa which is obstructing the cultivating rights of the Petitioner. The Commissioner-General of Agrarian Development has instructed the Deputy Commissioner to institute action (PX26). Thus, by the conduct of the Respondents themselves, it is evident that the duty that is sought to be enforced is a statutory duty under the Agrarian Development Act No. 46 of 2000.

The Petitioner is seeking a legal right that has been accepted by the agrarian development officer who had conducted several inquiries pertaining to this issue and concluded that the pillewa has been illegally filled, thereby it is apparent that the Petitioner’s cultivation rights have been

violated. At this stage, it is pertinent to note that as per PX1(B) the threshing floor is also situated within the pillewa.

Up to this time, the Respondents have discharged the public duty entrusted to them under the statute, but does this public duty ends there? As per the inquiries conducted, the Respondents have come to several findings. Based on these findings the Respondents have to act as stipulated by the Act. The Petitioner's main argument is that the Respondents have failed to take any further action based on the findings. This Court observes that in view of the 4th Respondent's letter marked as PX23(B) the stipulated action in the said letter has not been carried out.

This would be an appropriate stage to consider the relevant provisions of the Act mentioned in the letter. Which would also address one of the Objections raised by the Respondents.

Section 32 of the Agrarian Development Act states as follows;

“Any person who, without obtaining written permission from the Commissioner-General

- (a) Fills up an extent of paddy land with soil or other material or attempts to fill up such extent of paddy land
- (b) Uses any extent of paddy land for a purpose other than an agricultural purpose or does any other act for such purpose
- (c) Constructs any structure within any extent of paddy land or does any at in furtherance of such purpose;
- (d) Removes soil form and extent of paddy land or attempts to do so; or
- (e) Utilizes and extent of paddy land in violation of the terms and conditions of the permission issued by the Commissioner-General”

The prayer b of the petition prays for a writ of mandamus against 1st to 4th Respondents to act under section 32(1)(5) and or to act under section 90(1). As per the side note, Section 32(1) contemplates offences using paddy land for purposes other than agricultural cultivation without the permission of the commissioner-general, while section 90 contemplates the interference of cultivation rights of the owner cultivator or occupier. This would be an appropriate time to consider the definition of paddy land given in the Act. The said definition states as follows,

***“paddy land” means land which is cultivated with paddy or is prepared for the cultivation of paddy or which, having at any time previously been cultivated with paddy, is suitable for the cultivation of paddy, and includes such other land adjoining or appertaining to it as may be used by the cultivator for a threshing floor or for constructing his dwelling house, but does not include chena land or any land, which, with the permission of the Commissioner-General is used for any purpose other than cultivation in accordance with the provisions of this Act, or which is determined by the Commissioner-General not to be paddy land*”**

On plain reading, the pillewa doesn't fall within the definition of paddy land unless the Petitioner can demonstrate that the pillewa qualifies under “such land adjoining or appertaining to it_as may

be used by the cultivator for a threshing floor or for constructing his dwelling house, as stated in the section. It appears that the Petitioner too had her doubts on this issue as in her letter dated 06.04.2015 she had requested the Commissioner-General to clarify the legal position regarding the pillewa. As correctly submitted by the Respondents, the Petitioner has failed to answer this objection to the satisfaction of the Court and has failed to demonstrate that the pillewa falls within the definition.

The Petitioner has failed to demonstrate whether presently the pillewa is used or whether it is used for the purposes defined in the Act. In the absence of such material before the Court, the first part of the relief prayed by the Petitioner has to fail.

The Respondents objecting to the relief prayed argue that, for them to act under section 32(1)(5) the offence contemplated has to be an offence that is being committed. The learned Counsel drew the attention of this Court to sec 32(1) the offences and the way it is described and submits what the legislator has contemplated is for section 32(1) to be operative it has to be an offence that is being committed in the present but the illegal filling and the construction had taken place somewhere around 2006. Therefore, the contention of the Respondent is, for them to act under section 32(5) the contemplated act should be a continuing offence. In view of this, the Court finds that the Petitioner has failed to demonstrate that the pillewa falls under the definition of paddy land thus the necessity to answer this objection would not arise.

The next objection Respondents raised was that for the Petitioner to complain, the Petitioner has not established title to the pillewa. Thus, the Petitioner has no legal right to seek a writ. To substantiate this objection, the Respondents submitted that there is pending litigation pertaining to the ownership of the pillewa. Both parties are not at variance with the existence of the case that the 5th Respondent has instituted against the Petitioner of this application. It was common ground that the said case is still pending. The Petitioner's grouse is filling of the said pillewa and construction of the road on it. However, we have perused the plaint in the District Court case (P36) in the said case the title to pillewa is not contested. Hence the Respondent's objection on the Petitioner's right to file this case based on title fails. This brings us to the next objection raised by the Respondents on lashes and undue delay.

As per the inquiry reports that have been submitted to the Court and of the Petitioner's own pleadings and submissions, it is evident that the paddy field had been filled and a house had been constructed in the year 2006. However, there is no evidence or material submitted to this Court to establish when the illegal filling of the pillewa had taken place or when the alleged road had been constructed on the disputed pillewa. Therefore, this Court is not in a position to come to the conclusion as to when the alleged filling of the pillewa has taken place, as no material evidence has been submitted to this Court to demonstrate the same. It is also pertinent to note that irrespective of when the construction had taken place, the Respondents has commenced their inquiries on the complaint received in the year 2015 and the relevant officers had recommended action to be taken. If there was an undue delay, the Respondents should have communicated it to

the Petitioner but in this case, we don't find such a thing has happened. Further, the Petitioners' grouse is that the Respondents have failed to pursue the legal action recommended pursuant to their findings. We also find that the Respondents have failed to inform the reasons for their inability to take further steps based on the findings, especially in view of their previous advises which contemplate legal action.

This takes us to the alternate relief prayed by the Petitioner. This Court will now consider the alternative relief prayed by the Petitioner namely the Respondents to act under section 90(1) of the Act the said section reads as follows. ***“Where a complaint is made to the Commissioner-General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner-General after inquiry may if he is satisfied that such interference will result in damage or loss of crop or livestock, issue an order on such person cultivator or occupier requiring him to comply with such directions as may be specified in such order necessary for the protection of such rights :***

Provided that an order under this section shall not be made for the eviction of any person from such agricultural land:

Provided further that an order issued under subsection (1) shall not prejudice the right title or interest of such person, cultivator or occupier to such land, crop or livestock in respect of which such order is made”

The learned Counsel for the Respondent's contention was the alternate relief prayed, has to fail as the Petitioner had failed to complain that she is being prevented from using the pillewa or that her cultivation rights have been affected. Thus, the Respondents contended that the Petitioner has failed to trigger the statutory requirements to institute an investigation under section 90(1) of the Act. In considering this objection of the Respondent namely, that there had been no specific complaints pertaining to the obstruction of the cultivating right of the Petitioner, we find that in documents marked as PX8, PX10, there is a reference by the Petitioner drawing the attention of the Respondent to act under section 90(1) of the Act and to preserve her cultivating rights. The Respondent's contention that the Petitioner has not made a proper complaint to state that her cultivating rights are violated cannot stand ground as in the letters sent by the Petitioner namely in PX10, the Petitioner has specifically complained and sought relief.

Therefore, in our view with this complaint and other material, the Respondents had sufficient grounds to act under section 90(1) of the Act. This complaint is sufficient for the Respondent to commence an inquiry. Further, it is evident that the letter dated 12.06.2015 (PX9) is a result of this complaint and in the said findings, the divisional officer has come to a conclusion that the Petitioners' cultivation rights had been affected. Accordingly, the Petitioner's contention was that the Respondents should have taken action under section 90 of the Act, has merit.

In our view the Petitioner's contention is well-founded and this objection of the Respondents has no merit and has to fail. We also find that the Respondents at no stage had submitted that the Petitioner's paddy field had not been cultivated or abandoned. However, consequently, they had taken up the position that the filling of the roadway and the construction of the house was illegal. If so, what prevented them from taking action under the powers vested in them pursuant to the provisions of the Agrarian Development Act No.46 of 2000. Especially under section 90(1). The Respondents have failed to answer this question and have failed to act under the said section. The Respondents have failed to give any reason as to why they failed to act under the said section other than to state that there was no complaint, which this Court is not inclined to accept on the grounds specified above.

Accordingly for the reasons set out in this Judgement, the application of the Petitioner is partly allowed, this Court grants a Writ of mandamus as prayed for in Prayer (b) alternative relief, to act under section 90(1) of Act No. 46 of 2000 and according to law. As the Petitioner has been partially successful in this application, we do not intend to award a cost. Thus, the parties will bear their own cost.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal