

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

H.P.D.S. Gunawardena (Deceased)
A.M. Nita Chandrawatha,
No.356, Naiwala Road, Udugampola.

Respondent-Petitioner-Appellant.

Case No.CA/(PHC)92/2015

Gampaha PHC Case No: Writ 07/2013

Vs.

G.D. Upali Dharmasena,
No.348A, Naiwala Road, Udugampola.
And 06 Others

Complainant-Respondent-Respondent

Commissioner General of Agrarian Development,
Department of Agrarian Development, Colombo 07.
And 02 Others.

Respondent-Respondents

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

Before: **PRESANTHA DE SILVA, J. &**
 K.K.A.V. SWARNADHIPATHI, J.

Counsel: S.A.D.S. Suraweera
(For the Appellant)

Chathura Galhena
(For the Complainant Respondent-Respondent)

Rajin Gunarathne, (S.C.)
(For the 8th, 9th and the 10th Respondent-Respondents)

Argued on: 27.10.2021

Decided on: 24.03.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Respondent-Petitioner-Appellant filed the Petition of Appeal on 06.08.2015 in respect of the order of the High Court of Gampaha pronounced on 22.07.2015 in the case bearing No.07/13 (Writ).

The Petitioner had prayed for;

- (a) To set aside the order entered on 22.08.2015 in the case bearing No.07/13/Writ by the High Court Judge of Gampaha
- (b) To grant the prayer of the Petition filed in the High Court
- (c) Cost
- (d) Any other reliefs.

The Respondent-Petitioner filed the case bearing No.07/13/Writ in the High Court of Gampaha on 28.06.2013. By that Petition, they had challenged an order of the Assistant Agrarian Development

Commissioner of Gampaha District entered in terms of Section 90 of the Agrarian Development Act No.46 of 2000.

They had prayed to cancel the order [P1] by a writ of certiorari. Once the notice was issued, the Complainant-Respondents and the Respondents appeared before the Court and was argued. Counsel represented all parties, and written submissions were filed at the inquiry. On those pleadings and written submissions, the order was delivered.

The Appellants had argued at the High Court that the Perakum farmer organisation, through a legal entity, had no status to file a complaint under Section 90 of the Agrarian Development Act. Therefore, accepting the complaint and holding an inquiry is ultra-virus. The order marked as [P1] has no legal binding or authority. They further stated that the land they bought for a fair consideration was named “Meegahawatha”. It was bought for residential purposes, and there was no access road to paddy fields or a threshing floor. The agrarian officers had not considered this position. Therefore, the findings of the inquiry are not fair and done with bias.

Once the High Court Judge delivered the order refusing to accept the version of the Petitioners. They moved up in appeal. The parties filed their written submissions, and then the case was taken for argument.

At the argument, the Appellant held that the Perakum farmer organisation is not a natural person. Therefore, it cannot file a case or a Petition in Court. Only natural persons can complain under the Act was not considered by the High Court Judge.

Document marked [P1] is a letter by the Assistant Commissioner of Agrarian Development of Gampaha to the Petitioner-Appellants. It refers to a site inspection and an inquiry held. Ending the letter, it had stated that if unsatisfied, the party could file a written appeal to a competent court.

What is a competent court is stipulated in Section 42 of the Agrarian Development Act 2000. The section reads as follows: -

“The decision of an Agrarian Tribunal on an application, complaint or appeal referred to it shall be final. Provided that an aggrieved party may prefer an appeal to the Court of Appeal within thirty days of the receipt by him of such decision on a question of law.”

Therefore, the Petitioners must prove to the satisfaction of the Court that he had exhausted all other avenues available to him. It is essential to consider his conduct at the inquiry on the 6th of August 2012 inquiry notes that Nita Adhikari Gunawardena – Respondent not present but had sent a letter stating she would not participate in the inquiry. It was decided to inform her by writing to appear before the inquiry officer, to which she had responded by sending an affidavit. That affidavit was marked as [P3] and read that she would not participate. She had claimed that there was no pathway or a thrashing floor in the affidavit.

As the decision of the Agrarian Officer was final, it was her duty to face the inquiry, give evidence and face cross-examination mere, saying that there was no pathway, or a thrashing floor would not help her. This proves that she had not acted diligently. Can she claim that she had exhausted all remedies available to her? Therefore, she cannot now complain about a question of law. Section 42 had permitted to file of a case only when there is a question of law.

Another point to consider is that one who complains must do so after complying. In other words, comply and complain is a golden rule observed by our courts. In this instance, the Petitioner-Appellant had failed this test. She had not complied. She had refused to participate in the inquiry. Therefore, she cannot now complain.

The Respondents argued that necessary parties were not named. The Appellants argued that the Perakum farmer organisation is not a natural person to be added. However, section 43(3) of the Agrarian Development Act reads as follows: -

“Every registered farmers’ organisation shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name”.

Since the Parakum farmer organisation was registered, it can be sued. Then as the main complainant was the Parakum farmer Organisation, the Appellant should have named the

organisation as a party. In *Rawaya Publishers and Others Vs. Wijedasa Rajapakshe and Others*¹ held that;

“In the content of writ applications, a necessary party is one without whom no order can be effectively made The Petitioner cannot be permitted to proceed with an application keeping the original complainant out of the proceedings”.

In the present case, Parakum Farmer Organisation was the main complainant who went before the Agrarian Development officers. [P1] indicates that the complaint was made by Upali Darmasena and others of the Parakum Farmer Organisation.

For reasons discussed above, I dismiss the appeal of the Appellant subject to a cost of Twenty Thousand Rupees.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal

¹ (2001) 3 SLR 216