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

In the matter of an Appeal under Article 138 read with Article 154 P (4) of the Constitution of the Republic of Sri Lanka.

Ratnayaka Muiyanselage Jayawarana, Muhanarawa,
Batapola, Kalubululanda.

Petitioner-Appellant (deceased)

Appeal No. C.A./(P.H.C.) 122/2014
CA/PHC(UVA) Writ 29/2013

Now Substituted by
R.M. Ajith Pathmakumara, Muhanarawa,
Madularawa, Kalubululanda.

Petitioner-Substituted-Appellant

Vs.

01. W.R. Anurasena of No.26, Maularawa, Kalubululanda.
02. Assistant Commissioner of Agrarian Development
Agrarian Development UVA Regional Office, Badulla.
03. Commissioner General of Agrarian Development, Department of No.42, Marcus Fernando Mawatha, Colombo 07.
04. The Attorney General

Attorney General's Department, Hulftsdorp,
Colombo 12.

Respondent-Respondents

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

Counsel: Vijaya Niranjan Perera PC with Oshadee Perera
(For the 1st Petitioner Substituted Appellant)

Thilan Liyanage
(For the 1st Respondent-Respondent)

Buddhika Yapa
(For the 2nd to 4th Respondents)

Argument: By way of written submissions

Decided on: 31.03.2022

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

JUDGMENT

The Petitioner-Appellant had made this application to set aside the Judgment dated 30.07.2014 of the High Court of Badulla. Further pleaded to grant reliefs (iii) (iv) and (v) prayed for in the original Petition for cost and other reliefs.

By the Petition dated 22.08.2014, the Petitioner had stated his grievances.

The Petitioner had served under three owners or co-owners as a tenant cultivator in the Muwanarawa paddy field. From the said paddy field, one co-owner was entitled to thirty-seven perches, namely the father of the 1st Respondent (W.R.D. Appuhamy), applied under section 5

(a) (1) of the Agrarian Services Act No.4 of 1991. However, as the Act was cancelled and a new Act No.46 of 2000 was introduced, the inquiry was laid by.

The 1st Respondent later became the owner of the thirty-seven perches and informed the Petitioner that he was willing to transfer the land to the tenant cultivator for a sum of Seven hundred rupees (7 lakhs). This was informed by a notice under Section 2(1) of the Agrarian Development Act No.46 of 2000.

Meanwhile, the Petitioner had purchased two lots. To demarcate the boundaries of his lands, he had filed a partition case in the District Court of Walimada. As there was a dispute regarding the price quoted, the Agrarian Services Board decided to hold an inquiry under section 2(4). An officer was appointed to hold the inquiry. The decision was conveyed to the Petitioner to buy the said 37 perches at a sum of Four lakhs ninety-nine thousand five hundred rupees during the specified time, namely three weeks.

An inquiry was held under Section 2(4) of the Agrarian Development Act. Without any information or notice to the Appellant. Magistrate Court's order of case No.13292 was produced to eject the Petitioner. Without notice or summoning him before the Magistrate, ejecting him from a land he had been enjoying was contested by the Petitioner.

For this purpose, the Petitioner filed papers in the High Court of Badulla, praying for a Writ of Mandamus and certiorari, among other reliefs. The Writ Application No.29/13 was the case filed in the High Court of Badulla. After holding an inquiry, the learned High Court judge delivered an order dated 30.07.2014 dismissing the application. Aggrieved by the said decision, the Appellant had sought the intervention of this Court.

All parties agreed to dispose of the matter by way of written submissions. The Petitioner-Substituted Appellant had set out three main points which he had stressed as points to be considered in his favour. The rule of natural justice was violated as he was not heard before marking the impugned decision by the Agrarian Services Authority.

In support of this point, the Appellant points out that he was never heard before making the order of ejectment. Section 8 of the Act No.46 of 2008 has not complied. This section provides for the

Commissioner-General or any person authorized by the Commissioner to present a written report which should include failure to vacate an extent of land.

Even though 37 perches are mentioned in the present case, boundaries are not discussed. Therefore, from what land he is to be ejected is uncertain. On this ground of unidentified boundaries itself, the Respondents' application should fail. When perusing the Respondents' submissions, it is clear that the 37 perches are the 37 perches transferred by the owner to whom the Petitioner was a tenant cultivator. Even though no specific demarcation of boundaries, the Petitioner had identified what belonged to the 1st Respondent over the years. His participation at the inquiry, where he was offered to buy the land within three weeks, proves his knowledge of the land.

As to violating the rule *Audi alteram partem* in perusing the document [V2] it had given boundaries North by Kadura South by Galwata, w., Badalla, East by Badala, Kadura West by Balance of the same land.

The documents [V4] prove that an inquiry was held where R.M. Jayawardena was represented by an Attorney-at-Law, namely Mr Sugath Jayawardena. The Petitioner had failed to show any lapses on the part of the Respondents. The point on lawful delegation of powers has not been conferred on the Agrarian Development official to cause the Appellant to be ejected also fails as the document produced indicates the delegation of power.

Whether the paddy land can be identified or not was discussed earlier. Even though these were the facts of this case, Court should consider the order of the learned High Court judge. His reasons for the refusal of the application of the Petitioner.

Section 42 of the Agrarian Development Act No.46 of 2000 reads as follows:

> *"The decision of an Agrarian Tribunal on any application, complaint or appeal referred to it, shall be final; Provide 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"*

This section was not complied with by the Petitioner. He is estopped by saying he was not aware of the inquiry. He was represented by an attorney at Law who had cross-examined the witnesses at the inquiry. When the decision was made, if the Petitioner had any grievance, he should have

exercised the legal remedies provided in the Act since the Petitioner had not moved at the proper time. After the order of the inquiry, he cannot seek remedies regarding the inquiry. The argument regarding the ejectment order made by the Magistrate is another point on which the Petition is based.

However, there are statutes in which application is made *ex-parte,* and the Judge delivers an order prayed for. Whenever the statute states, enforcement orders must be given, as in this case, the Magistrate must proceed according to the provisions of the statute.

On those grounds, the learned High Court Judge had upheld the Respondent's arguments. I see no reason to disturb the High Court Judge's order, as discussed above.

Prayer regarding writs is the main point to be discussed. The Petitioner must show what administrative Act or order is *ultra vires* or void in Law. Mere praying for a writ is not a ground to grant a Writ. Duty is cast upon a Judge who issues a writ to be satisfied that there is no other remedy or option than to issue the Writ. To conclude, one who prays for the Writ must prove it to Court.

- The person or persons had a legal authority to determine the question of affecting the right.
- In exercising his duty, he had acted exceeding the authority given to him, causing damage to the party seeking a remedy.
- The violator is subject to the process of Law.

The above positions were discussed in many cases R v Electricity Commissiners, ex p London Electricity Joint Commission[1] is the most critical case. The Petitioner had not proved what or which part of the officers' actions was illegal or *ultra vires.*

As the learned High Court judge had discussed, the Petitioner had not specified against whom a writ of Mandamus is prayed or what legal right of his had been violated.

[1] (1924) 1 KB 171

In the case of *Perera Vs. National Housing Development Authority*[2] reads as follows:

> *"On the question of a legal right, it is to be noted that the foundation of Mandamus is the existence of a legal right. (Napier Ex-parte 1852 18 QB 692) Mandamus is not intended to create a legal right but to restore a party who has been denied his right to the enjoyment of such right. A "Mandamus" will lie to any person or authority who is under a duty (imposed by statute or under a common law) to do a particular act if that person or authority refrains from doing the Act or refrains for a wrong motive from exercising a power which is his duty to exercise, the Court will issue a mandamus directing him to do what he should do (R. Vs. Metropolitan Police Commissioner 1953 AER 717 at page 719."*

The Law is that a writ of Mandamus can only be issued to a natural person. In the case of A.C.M. *Hanifa Vs. Chairman Municipal council Nawalapitiya*[3] reads as follows:

> "*A mandamus can only issue against a natural person who holds a public office. Accordingly, in an application for a writ of Mandamus against the chairman of an Urban Council, the Petitioner must name the individual person against whom the Writ can be issued".*

Many judgments have affirmed that a writ of Mandamus can only be issued against a natural person. In the case of *Martin and Another Vs. Assistant Commissioner of Agrarian Services and two Others*[4] is another example in which the courts have upheld this position.

In the Petition dated 22.08.2014 only natural person referred is W.R. Anurasena, who is not a public officer. All other Respondents are legal personalities established for administrative purposes. The 4th Respondent is the Attorney General. The 2nd to 4th Respondents are referred to in their official capacities. This Court cannot consider those positions as natural persons.

For reasons set out above, I affirm the Judgment of the learned High Court Judge of Badulla dated 30.07.2011.

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[2] 2001(3) S.L.R. 50
[3] (66 NLR 48)
[4] (2011) S.L.R. Vol.2 page 12

Further, I dismissed the Petition dated 22.08.2014 of the Appellant-Petitioner. I make no order for costs.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal