

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA.

In the matter of an appeal under and in terms of Article 138 and Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA (PHC) 167/2017

High Court Embilipitiya Case No:
HCRA/09/15

Magistrate's Court Embilipitiya
Case No. 12945/15

Harischandra Senarath Rathnayake,
No. 20, Land of the Dumkola Company,
New Town,
Embilipitiya.

Respondent-Petitioner-Appellant

Vs.

Director General,
Sri Lanka Mahaweli Authority,
T.B.Jayah Mawatha,
Colombo 10.

Applicant-Respondent-Respondent

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Dinesh De Silva AAL for the Respondent-Petitioner-Appellant.
Sabrina Ahamed, SC for the Applicant-Respondent-Respondent.

Written Submissions 01.02.2022 by the Respondent-Petitioner-Appellant.
tendered on: 05.05.2022 by the Applicant-Respondent-Respondent.

Both parties agreed to abide by the motion dated 07.06.2022 filed by Applicant-Respondent-Respondent.

Order delivered on: 17.06.2022

Prasantha De Silva, J.

Judgment

This appeal emanates from the Order made by the learned High Court Judge of Embilipitiya dismissing the revision application of the Respondent-Petitioner-Appellant made against the Order of the learned Magistrate of Embilipitiya dated 02.07.2015.

It appears that the Provincial High Court of Embilipitiya by Order dated 31.08.2017 dismissed the application of the Respondent-Petitioner-Appellant for want of jurisdiction on the basis that the Provincial High Court has no jurisdiction to review matters pertaining to State lands.

The Respondent has relied upon the Supreme Court Judgment in the Case of *The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu [(2013) 1 S.L.R 25]*, which held that the Provincial High Court has no jurisdiction over the matters related to State lands, as powers relating to State lands have not been devolved to the Provincial Councils by the 13th Amendment to the Constitution. It is seen that the aforesaid case was a matter related to the writ jurisdiction of the Provincial High Court over a decision on a State land.

It is seen that, the learned Judge of the High Court of Embilipitiya had obviously followed the Judgment of *The Superintendent, Stafford Estate & Two others Vs. Solaimuthu Rasu [supra]*, which is a writ application. However, as many Judgments and authorities have held, the High Court acting under Article 138 of the Constitution, has jurisdiction to try and hear revision applications relating to State lands.

It is relevant to note that the *ratio decidendi* of the Judgment in *Solaimuthu Rasu's* case, which held that the Provincial High Court, had no jurisdiction to issue writs under Article 154P (4) of the Constitution pertaining to State lands.

In order for the Provincial High Courts to exercise writ jurisdiction, the issue should be one that falls within the purview of the Provincial Council list. Since the subject-State lands does not fall within the purview of the Provincial Council list, Provincial High Court is not empowered to issue writs under Article 154P (4) of the Constitution in respect of matters pertaining to State lands.

According to Article 154P (3) (b) of the Constitution, which stipulates that, "Every such High Court shall notwithstanding anything in Article 138 and subject to any Law, exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the province".

It is noteworthy that revisionary jurisdiction in terms of Article 154P (3) (b) of the Constitution, has not excluded the power to exercise appellate or revisionary jurisdiction regarding State lands.

It is observable that the Respondent-Petitioner-Appellant had invoked the revisionary jurisdiction of the Provincial High Court of Embilipitiya in terms of Article 154P (3) (b), and not under Article 154P (4) of the Constitution.

Therefore, it appears that the learned High Court Judge has misconstrued the Articles of the Constitution and also relied on the Judgment of ‘*Solaimuthu Rasu*’ expressing his view that any matter relating to State lands could not be reviewed in any manner in the Provincial High Court. As such, it is apparent that the Order made by the learned High Court Judge dismissing the revision application made by the Respondent-Petitioner-Appellant is made *per incuriam*. Therefore, the impugned Order dated 31.08.2017 made by the learned High Court Judge is set aside.

We take notice of the motion dated 07.06.2022 filed on behalf of the Applicant-Respondent-Respondent, stating its consent to have this matter sent back to the High Court of Embilipitiya for it to be considered on its merits. In view of the aforementioned reasons, we set aside the impugned Order of the learned High Court Judge of Embilipitiya dated 31.08.2017 and send this case back to the Provincial High Court of Ratnapura to re-hear and determine this matter on its merits.

Thus, the appeal is allowed and Registrar is directed to send the case record back to the High Court of Embilipitiya forthwith.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL