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

In the matter of an application for orders in the nature of Writ of Certiorari and Writ of Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Suriya Arachchige Jayakody Rajapakse
No. 129/A, Pansala Road,
Godagedara, Mudungoda.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/121/2018

1. K.K Ranaveera Menike
   Agrarian Development Officer,
   Agrarian Services Center,
   Malwathuhiripitiya,
   Buthpitiya.

2. Mathugama Liyanage Niranjala Sandamini
   Assistant Commissioner
   Agrarian Development – Gampaha,
   No. 373/A,
   Agrarian Services Official Residence,
   Sri Bodhi Road,
   Gampaha

3. W. M. M. B. Weerasekara
   Commissioner General,
   Department of Agrarian Development,
   No. 42,
   Sir Marcus Fernando Mawatha

Colombo 07.

4. Mr. B. Wijayratne
   Secretary
   Ministry of Agriculture,
   No. 288,
   Sri Jayawardenapura Mawatha,
   Rajagiriya.

5. Mr. M. K. Somapala
   Secretary
   Gajaba Agricultural Organization,
   No. 84, Godagedara, Mudungoda.

RESPONDENTS

Before:	C.P Kirtisinghe, J Mayadunne Corea, J
Counsel:	Migara Dias with Sanjeewa Thelwalarachchi for the Petitioner Suranga Wimalasena SSC for the 1st – 4th Respondents
Argued on:	07.03.2022
Written Submissions:	For the Petitioner tendered on 19.04.2022 For 1-4th Respondents on 19.04.2022
Decided on:	30.05.2022

Mayadunne Corea J

The facts of the case briefly are as follows;

The Petitioner purchased a paddy land on 21.02.1999 to the extent of 9A 3R 28P by deed No. 1486 (P2). It is alleged that he had found it difficult to cultivate paddy due to the lack of irrigation facilities. Petitioner is alleged to have made an application to convert a part of the said paddy land to a High Land and subsequent to an inquiry, the land had been registered as a High Land on 22.10.2003 (P5). Thereafter, Petitioner states that he had been cultivating crops in the said High Land. He alleges that there had been a misunderstanding between the neighboring farmers which has resulted in him lodging police complaints against the said farmers. On 16.09.2009, the Petitioner received a letter from the 3rd Respondent seeking an explanation for the failure to cultivate the land and further alleges that the said letter had been sent at the instigation of the farmers. The Petitioner alleges that the said paddy land is situated in a way that is difficult to cultivate paddy. He further alleges that he had leased the land to another person for the purpose of cultivation and subsequent to the lease expiring had gained possession. Thereafter he alleges that the 2nd Respondent had reactivated the inquiry against him for non-cultivation of paddy in the paddy land and had re-registered the land as paddy land. The Petitioner alleges that the Respondent's decision to hold an inquiry against the Petitioner for non-cultivation of paddy and re-registering the said land as paddy land is unreasonable, arbitrary, and in breach of principles of natural justice. Hence this application for writs of certiorari and mandamus.

Petitioner's Complaint to Court

- The Petitioner complains that subsequent to his land being registered as a High Land, the Respondent's attempt to hold an inquiry for non-cultivation of paddy is bad in law,

- Re-registering his land as a paddy land was done in bad faith and is bad in law.

The Petitioner has sought the following reliefs;

- Grant and issue a Writ of Certiorari quashing the decision to hold an inquiry against the Petitioner in terms of P19;

- Grant and issue a Writ of Certiorari quashing the purported decision to register the subject land as a Paddy Land in terms of P22; (relief (e) in the prayer to the petition)

- Grant and issue a Writ of Mandamus compelling the 1st to 4th Respondents to abide by the Act in terms of decisions made in terms of P5 to register the subject land as High Land.

The Respondents while denying the allegations raised by the Petitioner, took several preliminary objections to the maintainability of this application. They are as follows;

- The Petitioner is guilty of laches,
- The Petitioner has failed to name necessary parties to the application,
- The entire application of the Petitioner is misconceived in law, vexatious and futile,
- The Petitioner has no legal right to seek the relief prayed for in the Petition,
- The Petitioner has deliberately misrepresented and/or suppressed material facts pertinent to this matter,

- Therefore, has failed to come before the Court with clean hands.

This Court will consider the said objection in due course.

At the commencement of arguments, the learned Counsel for the Petitioner informed that the Petitioner is seeking only relief (e) in the prayer and therefore the Petitioner's case will be confined to the said relief.

It is common ground that the land purchased by the Petitioner when purchased, was paddy land and had been registered in the paddy lands register. It is more fully demonstrated by the Petitioner's own documents P1 and P2 which describe the said lot as part of a paddy field.

The land is described in the schedule to the deed marked as P2 states as follows;

"යන මායිම් තුළ පිහිටි අක්කර නවයයි රූඩ් තුනයි පර්චස් විසිඑකි අට (අ.9 - රූ.3 - ප.28) ක් විශාල කුඹුරු බිම් වේ."

Further, the plan marked P1 depicts the said lot 1 as a paddy field. As per the plan, the said lot 1 is bounded to the North, South, and West by waterways and to the East by two other paddy fields. As submitted, the above-mentioned documents demonstrate that the said land had been a paddy field. The Petitioner's contention is that since the Petitioner could not cultivate paddy in the whole of the land purchased, he has made an application to register a portion of the land as a High Land. Petitioner submits that the reason as to why he made this application to get part of the land converted to High Land is that, as per the situation of the land, it is not possible to make a proper irrigation system to cultivate paddy in the entire land. However, Petitioner concedes that 2 acres of his land are still registered as a paddy field.

Denying this position, the Respondents contended that the land was always a paddy field and the Petitioner by irregular means had got an entry made to state that 7 acres of his land as High Land. The Respondents concede that there is an entry in the agricultural land register to state that 7 acres of the land are considered as High Land however, they contend that the procedure adopted to change the paddy filed into High Land is completely wrong and the person who made the entry in P5 converting the said land into high land did not have any authority to do so. Thus, their contention is that P5 is void ab initio and has no legal validity.

Subsequent to the change of the nature of the land in P5, 7 acres of the land had been cultivated with High Land crops and not with paddy. In these circumstances, there had been complaints to state that the Petitioner had been involved in filling a paddy field illegally.

In 2009 September, the Commissioner-General issued a notice on the Petitioner under sections 22 and 23 of Act No 46 of 2000 for non- cultivation of the land (P12). This has been followed by a supervision order dated 11.11.2009 (P13). It is pertinent to note that both P12 and P13 names the land as a paddy field namely "maha kumbura". The Petitioner has failed to submit to this Court, whether the said P12 and P13 had been replied to or not, or whether it had been brought to the attention of the author of the said letters that the land had now been registered as a high land. After receiving the said documents, in 2012 the Petitioner had leased out the land for cultivation for a period of 5 years. The Petitioner was silent as to whether the land had been cultivated

during these five years. In 2017, the Petitioner has been served with yet another notice for non-cultivation of the land (P14). This notice too describes the land as a paddy field namely "maha kumbura" and is pertaining to the extent of 9 acres, which is the entirety of the land the Petitioner had purchased under P2. This letter had been replied to by the Petitioner denying the allegation of non-cultivation. Subsequently, the 3rd Respondent had sent another notice dated 22.09.2017 informing the Petitioner that he had failed to cultivate the land (P17). This letter too describes the land as paddy land and is pertaining to the entire 9 acres of the land. Thereafter, on a complaint received pertaining to an illegal filling of paddy land (P20), the 2nd Respondent had issued P19 and sought to hold an inquiry.

Petitioner contends that pursuant to section 53 of Act No 46 of 2000, the Agrarian Development Council has to prepare and maintain a register of agricultural land within its area. As per section 53 (2), details of agricultural lands have to be registered. The said section says as follows;

"Every such register shall contain the name and extent of each agricultural land, the name of the landlord, the occupier, or owner cultivator, as the case may be and such other particulars as may be prescribed"

Thus, the particulars of the register are to be amended and, section 53 (9) of the Act provides for the same. The Petitioner contends that the regulations pertaining to the said amendments are contained in Gazette Notification No 66/14 dated 14.12.1979. It is the contention of the Petitioner that, pursuant to the Gazette, an application had been made by the Petitioner to change the nature of part of the land. The document P4 requests the Petitioner to be present for an inquiry. The heading of the said document states as follows;

1979 අංක: 58 දරණ ගොවිජන සේවා පනත

1979.12.14 දිනැති අංක: 66/14 දරණ ගැසට් පතෙහි පළ කරන ලද නියෝග

කෘෂිකාර්මික ඉඩම් ලේඛනය ප්‍රතිශෝධනය කිරීම

It is the contention of the Petitioner that in view of Regulation 11 of the said Gazette, he made the application to convert the paddy land into a High Land. Challenging this contention, the learned Counsel for the Respondents argued that the said Gazette under Regulation 11 does not empower such a conversion. The Petitioner's contention is that the nature of the land can be changed by the amendment of the contents of the Agricultural Register thus, he has made an application to amend the nature of part of the subject land to make it into a High Land. The said application is not before Court. Thereafter he has been called to come to an inquiry which is depicted in P4, which resulted in the entry in the agricultural land register (P5) where the land had been converted into High Land.

However, it is pertinent to note that the Petitioner has failed to submit to this Court, the application that was made to amend the nature of his land. In this regard, the Petitioner has submitted only 2 documents namely the letter sent by the secretary of the "Agricultural Karaka Sabahawa" and the copy of the Agricultural land Register signed by the Secretary to the Agrarian Services Karaka Sabahawa.

The Respondents challenged the said entry and the genuineness of this conversion on two grounds, namely that the Petitioner has failed to submit the application where he requested for the change of the nature of the land and the amendment to the agricultural land registry, and that the author of P5 has no legal right to take a decision on deciding whether a land is paddy land or it should be registered as a high land. Thus, the contention that the amendment reflected in the register is a nullity. At this stage, it is also pertinent to note that as per document P2, the Petitioner has purchased this land in 1999. The purported inquiry has been held in January 2001 and the purported amendment in the register is dated 22.10.2003 which is nearly 2 ½ years after the purported inquiry.

The learned Counsel for the Respondent submitted that there exists no documentary evidence in the files maintained pertaining to the application by the Petitioner, to convert the said land. It was also contended that there are no copies of any proceedings of an inquiry held pursuant to P4, or a decision by the Commissioner-General and argued that the Petitioner has failed to submit the application and the decision because there was no inquiry or a decision.

However, what is available is only the entry as reflected in P5 where 7 acres of the land has been registered as a High Land the said entry is not made by the Commissioner-General. Therefore, the Respondents contended, that the purported inquiry was a sham and the availability of only two documents submitted to this Court by the Petitioner creates a doubt. Nevertheless, it was argued that in any event, the signatory to the document P5 lacks jurisdiction or legal authority to amend and make an entry without the consent/approval of the Commissioner-General. Further, the Respondents submit that the name and description of the land which appears in the agricultural register (P5) and the land described in the schedule of Deed No. 1486 (P2) are different.

As per section 28 of Act, No 46 of 2000, the sole authority to decide whether a land is paddy land or not is vested with the Commissioner-General. To enable the Commissioner-General to arrive at such a decision, he can call for the observations and information from the Agrarian Development Council. Section 28 (2) reads as follows;

"The Commissioner-General may, for the purpose of making a decision under subsection (1), call for and obtain the observations and information from the Agrarian Development Council within whose area of authority the extent of land is situated and from the relevant government departments statutory boards and institutions. It shall be the duty of every such government department, statutory board, and institution to furnish such observations and information as soon as practicable".

It is pertinent to note that the Petitioner has submitted the documents calling him for an inquiry and the copy of the agricultural register with the amendment, to prove that there had been an inquiry and the nature of the land in the register had been changed. Also, the Petitioner has tendered an affidavit from a person who is purported to have appeared with the Petitioner at the inquiry to establish the holding of the inquiry but has failed to explain the reason for not obtaining and submitting to this Court the inquiry proceedings and the formal decision of the Commissioner-General allowing the land to be registered as a highland.

The Petitioner has failed to submit to this Court, the formal decision of the Commissioner-General under section 28 of the Agrarian Development Act. We also observe that even during the argument, the Petitioner has failed to meet the strenuous argument of the Respondents that there was no decision under section 28 of the Act by the Commissioner-General, prior to the amendment being effected in the agricultural register marked as P5.

In the absence of such a decision, the Respondents submitted that the said entry in the register does not have any legal validity or legitimacy. They further argued that under these circumstances only, the 2nd Respondent had issued a supervision order dated 11.11.2009 (P13) and letters dated 16.09.2009 (P12) and 01.06.2017 (P14) under section 22 of Act No 46 of 2000. None of these letters have been challenged by the Petitioner at the relevant time. The Petitioner has failed to explain his failure to reply to the documents P12, P13, P14.and P17 and inform the Commissioner-General that, pursuant to P5, the disputed land is not a paddy land anymore and the same has now been registered as a high land. Especially when the documents mention the land in dispute as "maha kumbura" ("මහ කුඹුර"). Subsequently, the Petitioner has been called for a further inquiry upon a complaint received by 1st, 2nd, and 3rd Respondents.

The said complaint is marked as R3 and the letter informing the parties of an inquiry pertaining to the complaint is marked R2. The complaint which is dated 09.10.2017 alleges that the Petitioner is illegally filling a paddy filed. Pertaining to this complaint, the Respondents have called the Petitioner for an inquiry by letter dated 04.12.2017, this letter is marked as P19 which was originally sought to be quashed by the Petitioner. However, on the day of the argument, the Petitioner informed that he is not pursuing the said relief.

In answering the allegation pertaining to the amendment, the Petitioner contends that why he sought an amendment to change the nature of the land from paddy land to high land, is because it was impossible to cultivate paddy in the said land due to the non-availability of irrigation facilities in the said land.

As correctly pointed out by the Respondents, and the documents submitted, this Court too observes that the Petitioner's land is bound by waterways and paddy fields. The Petitioner did not dispute this fact. It is also pertinent to note, that as per the Petitioner's own letter dated 21.09.2017 (R1) Petitioner says that he is unable to cultivate paddy due to the inability of a tractor to reach the paddy field over the waterways. In this letter, he does not disclose that he cannot cultivate paddy due to lack of water nor has he submitted that in 2003, this land had been made into a High Land and therefore, he does not need to cultivate paddy. Instead, he had requested the authorities to restore the NIYARA to its original position. The 3rd Respondent has specifically mentioned that the Petitioner has never complained to him pertaining to the lack of irrigation facilities to cultivate paddy. We find that the Petitioner has failed to substantiate his contention of lack of irrigational facilities by submitting any correspondence he had with the 3rd Respondent pertaining to the said issue.

As observed above, the Petitioner has failed to disclose to this Court, whether he replied to the letters marked as P12 and P13, as by that time, the nature of the land is purported to have been changed. In the absence of an explanation, the conduct of the Petitioner amounts to a suppression

of material facts. Especially in view of the Respondent's contention that the entry in P5 was made without authority, the Petitioner's failure to disclose whether there was a decision by the Commissioner-General under section 28 before amending the agricultural land register (P5), amounts to suppression and misrepresentation of facts. This will be dealt with elsewhere in this Judgement.

The Petitioner raised objections to the Respondent's challenge on the entries in the agricultural land register and argued, that at this stage the Respondents cannot impeach the entries in the agricultural register, especially in view of section 53 (6) of the Act.

Section 53 (6) states as follows; **"An entry in a register prepared or amended under the provisions of this section and which is for the time being in force shall be admissible in evidence and, shall be *prima facie* proof of the facts stated therein".** Accordingly, entries in the paddy land register are *prima facie* proof of the facts stated therein. Therefore, the Petitioner contended that the Respondents cannot now challenge the validity of the entry in the paddy land registry nor can the Respondents contend the land in question is paddy land. Answering this, the Respondent's contention was that the said presumption will not apply, as the said entry in the register is a nullity and also the document P5 is not a certified copy of the Agricultural Land Registry issued by the agrarian services committee. This Court observes that P5 is a photocopy and there is no seal to say it is a certified copy by the issuing authority which is the agrarian services committee.

In the absence of a certified copy of P5 being tendered to this Court, we find the necessary requirements for the presumption to apply, have not been complied with. In the objections filed by the 3rd Respondent, he has submitted that there are no documents in the file pertaining to the purported inquiry or the decision and has put the Petitioner in strict proof. However, the Petitioner has failed to produce the proceedings or the purported decision that gave rise to the entry in P5 but has only sought to take the cover under section 53 (6).

The Court will now consider submissions of the Respondents on the validity of the entry in P5.

Is the entry in the Register a nullity?

It is common ground that there exists an entry in the agricultural land registry which depicts the land described therein the extent of 7 acres as highland, and that the applicable law pertaining to P5 is Act No 46 of 2000. Section 28 of the Agrarian Development Act No. 46 of 2000 empowers the Commissioner-General to decide whether the land is paddy land or not. Section 28 of the Agrarian Development Act states as follows;

28(1) "The Commissioner-General may decide whether an extent of land is a paddy land"

28(2) "The Commissioner-General may, for the purpose of making a decision under subsection (1), call for an obtain the observations and information from the Agrarian Development Council within whose area of authority the extent of land is situated, and from the relevant government departments statutory boards and institutions, it shall be the duty of every such government department, statutory board, and institution to furnish such observations and information as soon as practicable. "

The plain reading of the section clearly demonstrates that the power to decide whether the land is paddy land or not is vested with the Commissioner-General. However, for this particular purpose, he may call for the observations and information from the Agrarian Development Council

As per section 28(1) and as discussed above, the Commissioner-General has the discretion to call for the observations and information from the respective Agrarian Development Council. However, the Agrarian Development Council has no power to change the nature of the land from paddy land to high land on its own. In the absence of any material to demonstrate that the Commissioner-General had taken a decision to amend a paddy land into High Land and, with the failure of the Petitioner to submit the inquiry proceedings in this regard and considering the Respondent's submission, denying, that the Petitioner had made an application to change the nature of the land, and also denying that the Commissioner-General decided to change the nature of the same, this would be an appropriate time to consider if the entry in the register is a nullity and whether it would attract the presumption in section 53 (6) of the Agrarian Development Act.

The Respondents strongly contended that the presumption will not be attracted as the entry in the registry is a nullity. Therefore, it was their contention that the said entry is devoid of any validity.

In **Hewitson and Milner v. Fabre (1988) 21 QBD 6 at 9**, *it was held that, "the service of the writ instead of a notice was a nullity, and not a mere irregularity, and that the order for service of the writ and all subsequent proceedings must be set aside…"*

In **CA Application No. 347/88, SC (Spl) LA Application No. 23/2012, SC Appeal No. 40/2013** Priyantha Jayawardena, PC. J cited the case of **Desmond Perera and others Vs. Karunaratne Commissioner for National Housing (1997) 1 SLR 148** stated as follows, "… ***Therefore, the decision made by the Commissioner to vest the house based on a belated application is ab initio void and a nullity as the Commissioner acted without power. Thus, the said decision of the Commissioner dated 16.09.1982 which is under reference is ab initio void and a nullity. Hence, there was no valid order made by the Commissioner to be considered by the Board of Review under section 39 of the said Law and, thus, the matter should have ended there."***

In our view, the Petitioner has failed to address to the satisfaction of the Court, the issue of nullity. The Petitioner has failed to explain his inability to submit the decision of the Commissioner-General. Therefore, in view of the principle laid down in the above cases, and in the absence of a decision from the Commissioner-General under section 28 of the Act, prior to the amendment reflected in P5 being made, the Respondent's objection that the entry in P5 is a nullity succeeds.

We have come to this conclusion after also considering section 52 of the Agrarian Development Act, which depicts the functions of the Agrarian Development Council. The said section 52 does not empower the Agrarian Development Council to make a decision pertaining to the nature of the land. This Court has also considered section 53 of the Act No. 46 of 2000. As per the submissions made, we are satisfied that the amendment contemplated under section 53 (1) does

not empower the said Council on its own to make a decision pertaining to the nature of the land namely to decide whether the land is a paddy land or not.

We find the Petitioner's subsequent conduct too doesn't help his contention of the change of the nature of the land, especially in view of the Petitioner dispatching R1. The said letter is silent on the change in the nature of the land and the purported amendment to the agricultural land register. The Petitioner has failed to disclose to this Court, as to why he failed to notify this very important fact of change of the nature in the register to the Commissioner-General, which would have solved the need for the inquiry. As stated above he has failed to explain his conduct of not submitting to the Court the said replies to the letters and supervision orders (P12, P13). This Court has to agree with the Respondent's contention, that the Petitioner has failed to explain to this Court, his failure to challenge the Supervision Order (P13) when it was issued, despite the entry in P5, as his land then would not be subjected to the cultivation of paddy.

Malice

This Court has also considered the Petitioner's allegation of the Respondent's alleged acts of malice towards the Petitioner. This allegation was vehemently denied by the Respondents. To demonstrate this allegation, the Petitioner's main submission was that the Respondents had sent a notice under section 22(2) alleging that the Petitioner has failed to cultivate the land depicted in the schedule (maha kumbura) (P12). It was the contention of the Petitioner, that this notice was a result of malicious complaints made against him by the farmers in the adjoining fields to disrupt his cultivation. It is pertinent to note, that as per the schedule of the said notice, the Petitioner has failed to cultivate paddy not only on the disputed 7 acres which he alleges have been converted into High Land but pertaining to the entirety of the land.

Even if we are to consider the Petitioner's submission that 7 acres of his land have been converted into highland, still an extent of 2 acres of land is remaining as paddy land. The Petitioner has failed to disclose whether he has cultivated paddy in this particular portion or not. We find that notice (P14) has been issued pertaining to the entire land consisting of 9A 3R and 2P. As stated above the Petitioner in replying to this notice has failed to bring it to the attention of the author of P14 that by P5, 8 acres of his land has been converted and registered as High Land nor has he replied to explain as to whether he has cultivated paddy in the balance 2 acres portion (P15). Further, as per document P18, a letter by the Petitioner to the 1st Respondent, he gives an explanation stating that there is no infrastructure to cultivate the land and, in this letter, he has also admitted that even the 2 1/2 acres of paddy land has not been cultivated. None of these letters add strength to the Petitioner's submission that the land cannot be cultivated with paddy due to lack of water.

The Petitioner contends that he was informed by the letter dated 04.12.2017 (P19) to be present for an inquiry on 13.12.2017, on the same day he had obtained a copy of the complaint made against him by the 5th Respondent alleging that he was systematically affecting the reclamation of the subject land. To substantiate his relief of seeking to quash document P19, the Petitioner alleges, that he is afraid of not getting an impartial and fair inquiry and submits that he attempted to walk away from the inquiry. The Petitioner's reason for this fear is explained by the allegation

that he has not been given the complaint against him and at the inquiry in December 2017, when attempting to walk away it is alleged that the Petitioner had been locked in the inquiry room and prevented from leaving the inquiry by the 2nd Respondent. However, the Petitioner has failed to substantiate this allegation with any independent evidence or documentary proof. If the Petitioner had been arbitrarily confined in a room by the 2nd Respondent, he should have lodged a police complaint on the incident. However, he has failed to do so and failed to submit any material to establish that he has made a police complaint to this effect. We also observe that as per P19 caption, the Petitioner should have been aware of the subject matter of the complaint. The said caption states, "**කුඹුරු ඉඩමක් සැලසුම් සහගතව ගොඩකිරීමට කටයුතු කිරීම පිළිබඳව දැනුම් දීම".** Further, this letter is addressed to the alleged complainant, where they inform the complainant to bring whatever oral or documentary evidence pertaining to the allegation. The letter only informs the Petitioner to attend the inquiry. We also observe that the letter does not state that the inquiry would be concluded on the same day or that the Petitioner is required to present evidence at the inquiry on the same day.

We have considered the documents R5, R6, and R7 all these documents bear the same date. In explaining this, the Respondents contended that as per P19, the inquiry had been held at the Agrarian Development District office in Gampaha, which is the office of the author of R7. The authors of R5 and R6 had attended the said inquiry at the said office. Therefore, it was the contention that they had submitted the said reports immediately after the inquiry as they were in possession of their inspection reports. Considering the material before us and the submissions of both parties it is our view, that the Petitioner has failed to demonstrate to the satisfaction of this Court, that the said letters have been executed with premeditated malice towards the Petitioner. The Petitioner has failed to submit any material to substantiate his allegation of the Respondents acting maliciously towards him, other than his assumption that the Respondents would have been instigated by the other farmers against whom the Petitioner has made police complaints a couple of months before. It is also pertinent to note, that the Petitioners have made two complaints against two individual farmers (P16A and P16B). None of the said names are reflected as the complainant in the petition that prompted the inquiry reflected in P19. The Petitioner has failed to demonstrate as to why the said complaint against two individual farmers to the police by the Petitioner, would cause 1st to 3rd Respondents, who have no connection to the said complaint and are state officers, to act maliciously against him. Especially when the Petitioner's complaint was not against them.

Quite contrary to the Petitioner's position, at the argument stage, the Respondents submitted that subsequent to the inquiry, a complaint has been lodged against the Petitioner for obstructing the duties of an officer and has been charged in the Magistrates Court of Gampaha. This submission was not controverted by the Petitioner. At the argument stage, none of the Counsels submitted as to what has transpired in these proceedings or the present position of this Magistrates Court case.

P 22

The Petitioner also sought a writ of certiorari to quash the decision reflected in P22. Which is the only relief he is pursuing. The Petitioner alleges that before P22 was issued, the Petitioner should have been afforded an opportunity to answer and an inquiry held. It was the contention of

the Petitioner that the decision in P22 has been made disregarding the amendment made to the Agricultural Land Register depicted in P5. This Court has already dealt with the legality of the entry in the register depicted in P5. Since this Court has come to the conclusion that the entry in P5 is a nullity, in our view the status quo prior to entry in P5 would remain. Thus, making the disputed land, a paddy land.

In paragraph 46 of the petition, the Petitioner admits that on the day of the inquiry he had got a copy of the complaint pursuant to an application made under the right to information request. Thus, he was aware of the complaint against him at the said inquiry. The Petitioner pleads that he attempted to walk out of the inquiry (para 53 of the petition). As per the pleadings, it appears that the Petitioner without answering the allegation or seeking time to answer the allegations has attempted to walk out of the inquiry. Thus, he has failed to utilize the opportunity that had been given to him to answer the allegation against him and is now complaining that he had not been given a hearing and no inquiry had taken place before the decision contained in P22 had been arrived at. Therefore, the Petitioner's contention that the decision in P22 had been arrived at without an inquiry has to fail on the Petitioner's own admission that he had attempted to walk out of the inquiry. Thus, as contended by the Respondents we find that the decision in P22 is a result of the inquiry held on 13.12.2017.

Subsequent to the said inquiry, the Agrarian Development Officer who held the inquiry, had submitted his findings to the Assistant Commissioner of agrarian development (R6). In the said findings, he had recommended that as per what has been elicited at the inquiry, the disputed land should be considered as a paddy land and has submitted the inquiry proceedings to the Assistant Commissioner. The Assistant Commissioner on the same day, had submitted to the Commissioner-General, his recommendation stating that the entry made by the Agrarian Services Committee converting the land from paddy land to highland had been ultra vires of the powers of the said committee. Therefore, he has invited the Commissioner-General to make a decision under Sec 28 of the Act to determine whether the disputed land is paddy land or not. He has attached the agrarian development officer's report and the agricultural research and development assistant's report (R7). On the basis of the said reports on 22.01.2018, the Commissioner-General has given his determination, determining that the disputed land of 7 acres is paddy land (R8).

We find the decision of the Commissioner-General under sec 28 of the Act is clearly reflected in R8. The Petitioner has failed to challenge the said decision and has not sought to quash the decision reflected in R8. Instead of that, the Petitioner is seeking only to quash the conveyance of the said decision by the Assistant Commissioner to the agricultural development officer (P22). We find the Petitioner's failure to make an application to quash the decision (R8) is fatal to this application, as without quashing the decision, merely quashing a letter that conveys the said decision to the agrarian development officer to effect the necessary amendments as per the decision of the Commissioner-General, would be futile.

After the arguments were concluded, with the permission of the Court, both parties filed their Written Submissions. This Court finds that in the Petitioner's Written Submission, the Petitioner has taken a new position. Namely, by the decision made in terms of P22, the Respondents have

disregarded the said decision to register the subject land as High Land in terms of P5, and thereby has frustrated the Petitioner's legitimate expectation. We find that the Petitioner when invoking the jurisdiction of this Court in his petition, has not pleaded this ground on legitimate expectation nor was it contended at the argument before us. In the above circumstances, we find the Respondents are deprived of the opportunity to answer new grounds that have been brought subsequent to the argument.

Even if this Court is to consider the Petitioner's above argument on legitimate expectation, we are unable to agree with the Petitioner's contention, as we have already held, that the said endorsement in P5 is a nullity.

It is our view that an endorsement made without authority, being a nullity, cannot give any legitimacy or a legal right to the Petitioner. Also, for the expectation to be legitimate, the act that caused the expectation to arise should be legitimate. This issue is dealt with in Administrative Law by HWR Wade and C.F. Forsyth (11th Edition) at pages 450- 452, the authors observe that,

"It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made." (page 452)

The next objection raised by the Respondents was that the Petitioner has failed to come before this Court with clean hands.

Uberrimae Fides

In view of the above findings, this Court has decided that this application has to fail. However, for completeness, we will consider the objections raised by the Respondents.

In order to establish the holding of the inquiry in 2001, pertaining to the change of the nature of the Petitioner's paddy field, the Petitioner has annexed an affidavit by Lalitha Gunesekara marked P6. As submitted by the Respondents, we find that document P6 is an affidavit given by Lalitha Gunesekara. The said affirmant does not say in what capacity she attended this inquiry. The Petitioner has failed to plead the role Lalitha Gunasekera played at the inquiry, nor did the Petitioner explain if the said Lalitha Gunasekra was a witness at the said inquiry or a mere bystander who happened to be at the inquiry. We also find that the affirmant is affirming something a 3rd party has said, which is completely contrary to the law governing affidavits.

As correctly submitted, the Petitioner had gone to the extent of submitting an affidavit by Lalitha Gunasekara, but has failed to submit an affidavit by the officer named in P6 and refute the

allegation of the Respondents or to produce the decision of the commissioner general. The Petitioner has failed to explain to this Court the reason for his inability to do so.

The Respondents also have taken objections as to the truthfulness of this particular affidavit, as the author had affirmed what a 3rd party had said at an inquiry after the lapse of seven years. The purported inquiry had taken place in 2001. Therefore, the Respondents contend that it would be impossible for an ordinary person to accurately give the name with initials of an officer who was purported to have been present to give evidence and the name of the officer who conducted the said inquiry. To substantiate this position the Respondents, bring to our attention the document marked R5, which is a report dated 13.12.2017 by Y. A. N. Jagath Kumara, the Agrarian Development Officer, and contended that this is the same officer who is supposed to have been present at the inquiry and who is supposed to have stated that there is no objection in changing the paddy land into a High Land.

Drawing our attention to document R5, the Respondents further contended that as per this R5 document, the said Jagath Kumara has said the disputed land had been a paddy land and had been cultivated until the present Petitioner became the owner. Further, he states that from 2001 to 2017 he had been collecting acreage taxes for the disputed land on the basis that the said land is a paddy field. In this document, he has never mentioned the purported inquiry that was held in the year 2001. Nor does he state anything about the conversion of the Petitioner's land nor about an amendment being made to the agricultural land register.

The Petitioner has failed to explain why he paid acreage taxes to the disputed land on the basis of it being a paddy land if it had been amended to be a high land.

In these circumstances, it is the contention of the Respondents that if the said Jagath Kumara had taken part in the said inquiry and had submitted about the conversion of the status of the land, he definitely wouldn't have collected the acreage tax on the basis of the land being a paddy field. Further, there was no reason for him not to mention the said conversion in R5.

The 3rd Respondent has contended there are no proceedings of an inquiry or decision under section 28 made prior to the amendment affected to P5, and has put the Petitioner in strict proof of the same. Hence the contention that the Petitioner's failure to answer this argument amounts to either there being no inquiry, or decision, which would amount to a misrepresentation of facts to this Court or as the Petitioner contends if there was an inquiry by not submitting the said decision of the Commissioner-General, the Petitioner has suppressed material facts to this Court. We find the Petitioner has failed to answer this contention.

The Petitioner does not disclose to this Court why he failed to submit the proceedings of the inquiry with the decision of the Commissioner-General. The said failure in the given circumstances amounts to a misrepresentation and suppression of facts.

In the case of **W. S. Alphonso Appuhamy v. Hettictrachchi (1973) 22 NLR 77** it was "*Held further, 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."*

Also, in **Namunukula Plantations Limited Vs Minister of Lands and others (2012) 1 SLR pg 376** it was interalia held that *"It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberimafides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence*."

In **Collettes Ltd Vs. Commissioner of Labour and others (1989) 2 SLR** it was held *"that it is essential, that when a party invokes the writ jurisdiction or applies for an injunction, all facts must be clearly, fairly and fully pleaded before the court so that the court would be made aware of all the relevant matters."*

Therefore, we find that the contention of the Respondents, that the Petitioner has breached the concept of uberima fides, succeeds.

Considering the above-stated facts, and the decisions of the above-mentioned decided cases, this Court agrees with the Respondent's contention, that the Petitioner has not come to this Court with clean hands, thus, by conduct, the Petitioner has disqualified himself to obtain the relief he has prayed for.

Accordingly, for all the reasons stated above, in this judgment, this Court is not inclined to grant the relief prayed by the Petitioner and we dismiss this application without cost.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal