

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

An application for Writ of Certiorari in terms of Article 154(G)(4)(b)(ii) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the provisions of the High Court of the Provinces (Special Provinces) Act No.19 of 1990.

CA/CPA/84/21

HC Galle/ WR - 57/21

Karnnagoda Withanage Saman Kumara Paththinigewatha,
Boraluketiya, Kahada, Agulugaha.

Petitioner

Vs.

1. N.A.K.L. Wijenayake,
The Corporative Development Department,
Commissioner and Registrar of the Southern Province of
No.147, Pettigalawatta, Galle.
2. Gunasiri Kannangara,
The Corporative Development Commissioner and Registrar of
the Southern Province of No.147, Pettigalawatta, Galle.
3. Sima Sahitha Habaraduwa Wiwida Sewa Samupakara
Samithiya, Galle Road, Habaraduwa.
4. Kamantha Waligamage Walipara, Kokwatta, Habaraduwa.

5. Kamani Dandeniya Simasahitha Habaraduwa Wiwida Sewa Samupakara Samithiya, Galle Road, Habaraduwa.

Respondents

And now between

In the matter of an application for revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, read together with Section 11(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Karannagoda Withanage Saman Kumara Paththinigewatha,
Boraluketiya, Kahala, Agulugaha.

Petitioner-Petitioner

Vs.

1. N.A.K.L. Wijenayake,
The Corporative Development Department Commissioner and Registrar of the Southern Province of No.147, Pettigalawatta, Galle.

Gunasiri Kannangara,
The Corporative Development Commissioner and Registrar of the Southern Province, of No.147, Pettigalawatta, Galle.

2. Sima Sahitha Habaraduwa Wiwida Sewa Samupakara Samithiya, Galle Road, Habaraduwa.

3. Kamantha Waligamage Walipara, Kokwatte, Habaraduwa.

4. Kamani Dandeniya Simasahitha Habaraduwa Wiwida Sewa
Samupakara Samithiya, Galle Road, Habaraduwa.

Respondent-Respondents

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

COUNSEL: Mahinda Nanayakkara
For the Petitioner
A. Gajadeera S.C.
For the 1st and 2nd Respondents.

Date of argument: 25.05.2022

Decided on: 09.11.2022

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

ORDER

The Petitioner-Petitioner will be referred to as the "**Petitioner**" and the Respondent-Respondents as the "**Respondents**" in this order.

The Petitioner filed papers in this court seeking to set aside the order delivered by the Learned High Court Judge of Galle in case No. H.C.W.R./57/21 on 06.07.2021.

An audit held in respect of the 3rd Respondent-Respondent Society in 2018 found a money shortage. The audit inquiry further established that the Petitioner had misappropriated the money, causing a loss to the 3rd Respondent Society.

The 1st Respondent, by letter dated 31.12.2018, called upon the Petitioner to show cause regarding the monetary loss.

The Petitioner failed to show cause within the given time and gave his reasons on 29.01.2019. By **P2**, the Petitioner was called upon to show cause on or before 16.01.2019.

The reasons given on behalf of the Petitioner are marked as **P3**. However, that reasoning was not accepted as a sufficient reason by the 1st Respondent. By **P2**, Petitioner was called to show cause why a certificate of the surcharge should not be issued to Petitioner, to which he failed to show cause to the satisfaction of 1st Respondent. Thereupon, a certificate of surcharge was issued, which was not honoured by the Petitioner. To recover the sum, the 1st Respondent instituted an action at the Magistrate's Court of Galle in Section 66(2) of the Co-operative Societies Act No.5 of 1972 (as amended).

After hearing both parties, the learned Magistrate delivered the order on 21.01.2021, enforcing the certificate of the 1st Respondent and ordered the Petitioner to pay a sum of Rs.1,200,000/=.

Aggrieved by the said order, the Petitioner lodged papers in the High Court of Galle. Here again, the Petitioner's papers were rejected. This revision application is to revise the order of the learned High Court Judge of Galle.

Both parties were heard in court and sought permission to file written submissions. This order is based on their submissions and documents filed of record.

The Petitioner contends that the learned High Court Judge had considered a wrong section. Therefore, the judgment should be set aside.

The audit was conducted under Section 44 of the Co-operative Societies Law No.5 of 1972 and was asked to show cause under Section 44(6) of the same Act. The finding by the 1st Respondent and the letter marked **P3** are under Section 44(6)(a) of the same Act.

Therefore, the decision of the Commissioner should be final. The law had not reserved any right of appeal to a dissatisfied person. The only remedy for an aggrieved party is by way of a writ. Section 58 of the same Act is different, and a right of appeal is available. The learned High Court Judge had misunderstood the sections.

Perusing the papers, the audit was carried out under Section 44 of the Act. It is also clear that Registrar had followed the correct procedure before filing the decision in the Magistrate's Court to recover the money due to the 3rd Respondent Society. The law has not bard the Registrar from acting under Section 44 instead of Section 58.

Even if there is no provision for an appeal under Section 44, anyone aggrieved can come by way of a revision. In this case, the Petitioner had not proved the necessary ingredients to consider his application as a revision. He had failed to bring any material, which can be considered an exceptional circumstance. Without exceptional circumstances, a court cannot dress with jurisdiction.

The learned Magistrate is empowered to collect the money demanded in the certificate filed in court. It is settled law that only three grounds are available to the Respondent to question regarding the certificate.

That is:

- (1) The court's jurisdiction is the residence or business not being in the jurisdiction.
- (2) When all dues had been settled.
- (3) The Respondent named is not the person in court.

The learned High Court Judge had observed that the Petitioner of the present case had not taken any of the three grounds in his objections. Therefore, the learned Magistrate is empowered to issue the order to pay.

The learned High Court Judge had further observed that the writ prayed by the Petitioner was to stop the enforcement of the Magistrate's order. In the case of *Bandaranayake Vs. Weerarithna*¹ says, "There is a general rule in the construction of statutes that what a court or person is prohibited from doing directly, it may not be done indirectly or in a circuitous manner. According to this judgment, what the learned High Court Judge had observed stands true in the present case.

When perusing the reasoning of the Petitioner, the only ground of defence he had taken was time. He had challenged that the certificate was concerning something that had happened eight years ago. Therefore, the certificate should not be considered.

As discussed above, this position does not fall into any ground on which the certificate can be challenged.

On the other hand, the Petitioner had not shown that he had carried out his duties diligently by acting under Section 43A (2) of the Act. He had given reasons to believe that he had submitted statements of accounts to the Registrar within three months of the close of the financial year.

Under such circumstances, the Registrar has the power to act under Section 66(1) of the Act. This Section in no way speaks of a time frame. Therefore, the Petitioner's argument regarding time cannot be considered reasonable grounds for this revision application.

The conduct of the Petitioner by not proving that he had acted under Section 43A (2) opened the court's door to believe that he had not done or had neglected what he should have done.

Therefore, it is clear that the Petitioner's action contributed to the present situation. In other words, his hands are tarnished. One who does not come with clean hands cannot seek remedy from our courts.

¹(1981) (1) S.L.R. 16

For the reasons discussed above, we see no reason to disturb the order of the learned High Court Judge of Galle in case No.57/21 dated 06.07.2021.

The application is dismissed subject to a cost of LKR 10,000/- [Ten thousand].

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal