

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for a mandate in the nature of writ of Certiorari and writ of Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application No:

0553/2019

1. Rupasinghe Arachchige Dona
Kusumawathie, No.13/A, Dharshana
Mawatha,
Hokandara South, Hokandara
2. Panagoda Widanalage Keerthilatha Perera,
No.13/B, Dharshana Mawatha,
Hokandara South, Hokandara
3. Panagoda Widanalage Gunarathna Perera,
No.13/D. Dharshana Mawatha,
Hokandara South, Hokandara
4. Panagoda Widanalage Ranjani Perera,
No.14, Hokandara South, Hokandara
5. Panagoda Widanalage Kirthirathna Perera
No.610/16, Ekamutu Mawatha,
2nd Gabadawatta Road,
Pitipana Town, Homagama

Petitioners

Vs.

1. W. M. B. Weerasekara,
Commissioner General of Agrarian
Development, Ministry of Agriculture,
Rural Economic Affairs, Irrigation and
Fisheries and Aquatic Resources
Development,
No. 288, Sri Jayawardhanapura Mawatha,
Rajagiriya

2. P. W. H. S. Sarathchandra,
Assistant Commissioner of Agrarian
Development, Agrarian Development, District
Office of Colombo,
No. 336, Ven. Baddegama Wimalawansa Thero
Mawatha, Colombo 10
3. W, K, Sarath Kumara,
Agrarian Development Officer,
Agrarian Service Centre, Malabe
4. Kaduwela Municipal Council,
New Kandy Road, Kaduwela
5. Sanjeeva Bandu Keerthi,
Municipal Commissioner,
Kaduwela Municipal Council,
New Kandy Road, Kaduwela
6. B. L. S. D. Perera,
Provincial Irrigation Engineer, Department of
Agrarian Development, No. 42, Sir Marcus
Fernando Mawatha, Colombo 07
7. Director General,
Urban Development Authority, 6th and 7th
Floors, Sethsiripaya, Battaramulla
- 8a. Pragathi Govi Sanwidanaya,
No. 494 / C,
Hokandara South,
Hokandara
- 8b. Kebeddawa Gamage Rathnapala
Perera,
Chairman, Pragathi Govi Sanwidanaya,
No. 494 / C,
Hokandara South, Hokandara

9. P. V. Wimal Shantha,
Secretary,
Pragathi Govi Sanwidanaya.
No. 494 / C, Hokandara South,
Hokandara

10. Weragala Gamage Don Wirasiri
Dayananda,
Pragathi Govi Sanwidanaya,
No. 494 / C,
Hokandara South, Hokandara

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: S.M. Vijithsingh for the Petitioners

R. Aluwihare, SC for 1st, 2nd, 3rd, 6th and 7th Respondents

Supported on: 22.02.2022

Order delivered on: 02.06.2022

S.U.B. Karalliyadde, J.

This Order is regarding to the issuance of notices of this writ application formally on the Respondents. Since the Petitioners sought interim reliefs in the Petition dated 10.12.2019 to this application, the Court issued notices on the Respondents in respect of the application for interim reliefs. The 1st- 3rd and 6th Respondents came before the Court and filed limited objections on 22.05.2020 in respect of the interim reliefs. Thereafter, when the case came up before the Court on 19.02.2021, the learned Counsel appearing for the Petitioners informed the Court that he moves only notices and not

pursuing with the interim reliefs. However, since the Court was of the view that it is more appropriate to hear the Counsel for the Respondents before taking a decision to issue notices formally on the Respondents, the Court fixed the matter for support. On 22.02.2022, the case came up for support and Court heard the learned Counsel for the Petitioner in support of this application. We heard the learned State Counsel for the Respondents as well.

As per the Petition to this application, the main relief sought by the Petitioners is to issue a writ of Certiorari to quash the decision marked as P-13 of the Assistant Commissioner of Agrarian Development (the 2nd Respondent) to construct an agricultural roadway on the private road used by the Petitioners as access to their land. Even though, the Petitioners sought a writ of Prohibition to prevent the Respondents from constructing an agricultural roadway on that private road, when supporting the application the learned Counsel appearing for the Petitioners admitted that the Petitioners cannot maintain that application.

The learned State Counsel appearing for the 1st to 3rd and 6th Respondents, denying the fact that an agricultural road was constructed as alleged by the Petitioners on their private road, submitted to Court that a connecting bridge (a concrete slab) has been constructed by the Provisional Irrigation Engineer (the 6th Respondent) to connect the road owned and maintained by the Kaduwela Municipal Council (the 4th Respondent) which is 10 feet wide and 55 feet long to the main ridge of the paddy field called as Kiule Kumbura. According to the learned State Counsel that bridge has been constructed for the farmers to take their tractors, machineries and other equipment used by them to cultivate Kiule Kumbura. A diagram attached to the document marked as 2R2 is tendered to the Court with the statement of objections of the 1st to 3rd and 6th Respondents to show the construction done by the 6th Respondent. To convince the

Court that the bridge has been constructed to connect the main ridge of Kiule Kumbura to the road owned and maintained by the 4th Respondent, a letter dated 05.10.2019 written by the Municipal Commissioner (the 5th Respondent) to the Chairman of “Pragathi” Farmers’ Organisation (the 8th B Respondent) is tendered to Court marked as 2R3. It has been stated in 2R3 that,

“ඒ අනුව හෝකන්දර දකුණ “දර්ශන මාවත” මාර්ගය ආරම්භයේ සිට ඔබ විසින් ඉදිරිපත් කර ඇති අංක 4781 දරණ පිඬුරේච්චි වාහන හැරවුම් ලක්ෂ්‍ය දක්වාද එතන සිට අඩි 55 දක්වාද කඩුවෙල මහා නගර සභාව මගින් සංවර්ධනය කර නඩත්තු කටයුතු සිදු කරනු ලබන මාර්ගයක් බව කාරුණිකව දැනුම් දෙමි.”

The learned Counsel appearing for the Petitioners drawn the attention of the Court to a letter dated 12.09.2019 written by the 5th Respondent to the Petitioners marked as P9 and submitted to Court that the 5th Respondent, contrary to the facts stated in 2R3, has stated in P9 that no written request has been made to acquire the private road used by the Petitioners as access to their land.

It is stated in P9 that,

“එම ලිපිය මගින් අංක 2342 සහ 1471 පිඬුරුපත් දෙකෙහි පුද්ගලික ඉඩම් කොටස්වලට යාමට දක්වා ඇති පුද්ගලික ප්‍රවේශ මාර්ගයන් කඩුවෙල මහා නගර සභාවට පවරා ගැනීම සම්බන්ධයෙන් තම පාර්ශවයේ බලවත් විරෝධය දක්වන බව දන්වා ඇත.

එහෙත් ඔබ විසින් ඉහත දක්වා ඇති මාර්ගයන් කඩුවෙල මහා නගර සභාවට පවරා ගැනීම සඳහා මේ දක්වා කිසිදු ලිඛිත ඉල්ලීමක් ඉදිරිපත්වී නොමැති බව කාරුණිකව දන්වමි.”

The contention of the learned Counsel for the Petitioner was that even though, in the letter marked as 2R3 the 5th Respondent has stated that it’s a public road, by P9 he has admitted that it’s a public road.

The surveyor plans mentioned in P9 bearing No's 2342 and 1471 which depicts the private road leads to the Petitioner's land are tendered to Court marked as P4(b) and P3(b) respectively, with the Petition.

A letter dated 01.11.2019 sent by the 2nd Respondent to the 5th Respondent is tendered to the Court with the statement of objections marked as 2R6. By that letter, the 2nd Respondent has called observations of the 5th Respondent as to whether the construction is on the private land of the Petitioners or connected to the road owned and maintained by the 4th Respondent.

When considering the above stated fact, it is clear that the position of the learned Counsel for the Petitioners is that the Respondents attempted to construct an agricultural road on the private road used by the Petitioners. On the other hand, the learned State Counsel appearing for the Respondents denying that position submitted to Court that the Respondents constructed a bridge connecting Kuile Kumbura and the public road owned and maintained by the 4th Respondent. Therefore, there are serious matters to be considered as to whether the construction has been done on the private road of the Petitioners as alleged by the Petitioners or whether it has been constructed connecting the main ridge of the paddy field and the road owned by the 4th Respondent as alleged by the Respondents and whether it is an agricultural road as alleged by the Petitioners or just a concrete slab to connect the ridge of the paddy field to the public road as alleged by the Respondents. When the main matters as such are in dispute, the Court cannot come to its conclusions only on the affidavit evidence of the parties.

In the case of *Thajudeen V. Sri Lanka Tea Board and Another*¹ Justice Ranasinghe held that,

¹ (1981) 2 SLR 471.

“CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Ed.), Vol.2, states at page 381: "The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt, the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances cannot be controlled by mandamus;" and,

On page 449: "Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation², Porraju v. General Manager B. N. Rly³”

When considering the above stated facts of the case in hand and the legal position, I am of the view that since the main facts which cannot be decided solely on affidavit evidence are in dispute, the Petitioners are not entitled to invoke the writ jurisdiction of this Court.

² A.I.R. 1953 Cal.581.

³ A.I.R. 1952 Cal.610.

The learned State Counsel argued that the Petitioners are not entitled to a writ of certiorari as prayed for in the Petition to quash the decision marked as P-13 for the reason that the alleged construction has already been completed and therefore, the writ application is futile. The learned State Counsel cited the decision of *Anuja Yoganathan vs. University Grants Commission*⁴ in support his argument. The learned Counsel for the Petitioners argued that if continuous prejudice causes to the petitioner by an illegal decision of a public authority the petitioner is entitled to have a writ. Therefore, the learned Counsel argued that since the decision containing in P 13 which is illegal causes continuous prejudice to the Petitioners, they are entitled to have a writ of certiorari to quash the decision containing in P 13. To strengthen his position the learned Counsel for the Petitioners cited the case of *Cooray vs. Gero*⁵ where it was held that the writ of mandamus could be issued to quash an illegal decision which causes continuous prejudice to the petitioner even if that decision is implemented and act upon. The learned Counsel also drawn the attention of the Court to the book titled “*Principles of Administrative Law in Sri Lanka*” by Dr. Sunil F.A. Cooray, 3rd Edition. Vol II pages 992 and 993 and an Indian publication titled “*Writ Law and Practice*” by Mr. Malik (2009) pages 258 and 259.

In the case at hand, the alleged construction has already been completed. The reliefs sought in the Petition are based on the premise that the construction is not yet completed. No reliefs have been sought on the basis that the construction is completed and continuous prejudice causes to the Petitioners as a result of the construction. The Petitioners have failed to seek reliefs on that basis by amending the Petition even after they came to know that the construction work has been completed from the statement

⁴ (C.A Writ No. 664/2011).

⁵ (1954) 56 NLR 87.

of objections of the Respondents. Therefore, since the Petitioners have not sought any relief on the basis that the construction is completed and continuous prejudice causes for them, they are not entitled to any relief which they have not sought for. Considering all the above stated facts and stated circumstances, Court refuses to issue notices on the Respondents. The application is dismissed. No cost ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL