

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

CA. CPA. 29/ 2022

High Court of Galle case No.

49/ 2019 (Writ)

No: 7/ 710/ GA/ 7- 139

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.

P. H. Gunasena,

Paniwatta Road,

Bopagoda, Rathgama.

Respondent- Petitioner- Petitioner.

-VS-

M. L. Wijedasa,

“Amara” Anhandiya,

Rathgama.

Complainant-Respondent- Respondent.

1. M. H. ErangaAthapaththu,
Assistant Commissioner (Legal)
(Inquiring Officer),
Agrarian Services Center,
Rathgama.

And

Agrarian Development Department,
No. 42,
Sir Marcus Fernando Mawatha,
Colombo-07

2. M. K. U. Ranjith,
Senior Assistant Engineer,
Agrarian Development Department,
Galle District Office,
Labuduwa, Akmeemana.
3. M. U. Kanchana Chathurani,
Assistant Agrarian Development
Commissioner,
Agrarian Development Department,
Galle District Office,
Labuduwa, Akmeemana.
4. K. J. K. ThusharaPriyanjith,
Agrarian Development Officer,
Agrarian Services Center,
Rathgama.
5. Hon. Attorney General,
Attorney General's Department,
Colombo-12.

Respondent- Respondents.

BEFORE: HON. JUSTICE PRASASANTHA DE SILVA

HON. JUSTICE K.K.A.V. SWARNADHIPATHI

COUNSEL: Mahinda Nanayakkara

for the Respondent-Petitioner-Petitioner instructed by Manoj Sanjeewa.

Shemanthi Dunuvila, SC

for the 1st to 5th Respondents.

ARGUED &

DECIDED ON: 07th of March, 2023

HON. JUSTICE K.K.A.V. SWARNADHIPATHI

This matter was supported to get a writ order by this Court. The Petitioner in this case had sought a writ from the High Court of Galle. However, after hearing both parties, the learned High Court Judge of Galle delivered Order on 20. 01. 2022 dismissing the application of the Petitioner in case No. HC Galle (Writ) 49/ 2019. Aggrieved by that Order, the Petitioner moved the revisionary jurisdiction of this Court.

We heard both parties in Court, and the Petitioner assisted that there had been two inquiries regarding the same matter by the Commissioner General of Agrarian Services under the Agrarian Development Act of No. 46/ 2000 and cited a letter dated 12.08.2016 addressed by the Deputy Commissioner of Agrarian Development in Galle District to the Commissioner General of Agrarian Services and also which is marked as “ඔ2” and also pointed out that in the submissions submitted to the High Court, the Respondents have admitted that they have held two inquiries. The document marked as P3 referred to the first inquiry as No. DAD/ GL/LEG.06/රනිම and the second inquiry as 7/7/10/GA/7-139.

However, in reply, it was brought to the notice of this Court that the letter referred to as “ඔ2” is not an inquiry report. It was only a site inspection carried out by the Assistant Officer of the Chief Engineer. On the site inspection, he had ordered that he felt it was a boundary dispute and to dissolve the matter in the proper Court. However, he had also referred to Annexure 1, which was not referred to by any party and the matter was again referred to the Agrarian Services Department, where at that point, it was held that an

inquiry should be held according to Section 90 (1) of the Act. The Section has permitted and gives all authority to the Commissioner General to hold a proper inquiry. Section 101 of the Act speaks of “agricultural roads”, and Section 90 (1) speaks of interference of cultivation rights, threshing rights, rights using a threshing floor, right of removing agricultural products or the right to use agricultural roads. This means if there is a dispute regarding access to agricultural land before going to Court, the Commissioner General of Agrarian Services has the right to hold an inquiry. That inquiry should be conducted by leading evidence, cross-examining, and considering all other documentary evidence available.

The first inquiry, which is a site inspection, used the word “පරීක්ෂණය” referring to the “ස්ථාන පරීක්ෂණය”. That is very clear that it was only a site inspection and not an inquiry under Section 90 (1) of the Agrarian Development Services Act.

Therefore, we are of the view that the High Court Judge had not erred, and we have no reason to disturb or interfere with the Judgment delivered by the High Court Judge of Galle.

Therefore, we dismiss the application.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal

KN/-