

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

In the matter of an Appeal under Article 154 (P) (6) read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.:  
CA (PHC) 258/2017**

PHC of Sabaragamuwa holden in  
Ratnapura Case No: RA 10/2009

Magistrate Court of Ratnapura  
Case No: 20442

Jen Seling  
Panda Noodles Manufacturing Company,  
Paradise, Nalanda Ellawala Industrial  
Zone, Phase 02,  
Kuruwita.

**PETITIONER**

**Vs**

Lakamuwage Lalitha Padmini  
472, Mahawalawatta Road,  
Ratnapura.

**RESPONDENT**

**AND BETWEEN**

Jen Seling  
Panda Noodles Manufacturing Company,  
Paradise, Nalanda Ellawala Industrial  
Zone, Phase 02,  
Kuruwita.

**PETITIONER-PETITIONER**

**Vs**

Lakamuwage Lalitha Padmini  
472, Mahawalawatta Road,  
Ratnapura.

**RESPONDENT-RESPONDENT**

**AND NOW BETWEEN**

Jen Seling  
Panda Noodles Manufacturing Company,  
Paradise, Nalanda Ellawala Industrial  
Zone, Phase 02, Kuruwita  
[DECEASED]

1A. Adiriyange Chandima Dilrukshi,  
Panda Noodles Manufacturing Company,  
Paradise, Nalanda Ellawala Industrial  
Zone, Phase 02,  
Kuruwita.

1B. Ling Seewan Chamikara,  
Panda Noodles Manufacturing Company,  
Paradise, Nalanda Ellawala Industrial  
Zone, Phase 02,  
Kuruwita.

[SUBSTITUTED PARTIES]

**PETITIONER-PETITIONER-APPELLANT**

**Vs**

Lakamuwage Lalitha Padmini  
472, Mahawalawatta Road,  
Ratnapura.

**RESPONDENT-RESPONDENT-  
RESPONDENT**

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

Counsel: Migara Doss AAL for the Petitioner-Petitioner-Appellant  
Leon Fernando AAL instructed by H.D Ariyasena AAL for the  
Respondent-Respondent-Respondent.

Written Submissions: Written submissions were submitted by the Petitioner-Petitioner-  
filed on Appellant on 13/06/2023 and 04/05/2022.  
Written submissions were submitted by the Respondent-Respondent-  
Respondent on 19/06/2023 and 10/10/2022.

Delivered on: 03.08.2023

**Prasantha De Silva J.,**

**Order**

This is an appeal emanating from the Order of the learned High Court Judge of the Provincial High Court of Sabaragamuwa Province holden at Ratnapura, exercising revisionary jurisdiction against the Order made by the learned Magistrate who was acting as the Primary Court Judge in terms of Section 66 of the Primary Court Procedure Act no 44 of 1979.

It appears that the Petitioner had filed a private Plaint in terms of Section 66 1 (b) of the said Act in the Magistrate Court of Ratnapura.

The learned Magistrate after following the procedure stipulated under Section 66 of the said Act, allowed parties to file Affidavits, Counter Affidavits and Written Submissions and thereafter made his Order on 29.01.2009 against the Petitioner on the ground that the Petitioner has not established a right over the disputed roadway.

Being aggrieved by the said Order, the Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden in Ratnapura seeking to revise/set aside the said Order.

However, after the conclusion of the hearing, the learned Provincial High Court Judge affirmed the Order of the learned Magistrate and made his Order on 20.09.2017 dismissing the revision application of the Petitioner.

Thereafter, the Petitioner had preferred an Appeal to this Court seeking to set aside the Order dated 20.09.2017 by the learned High Court Judge and the Order dated 29.01.2009 of the learned Magistrate.

The Petitioner submitted that he has been allocated a premises to set up his business “Panda Noodles” manufacturing company in the Nalanda Ellawela Industrial Zone Phase II for an extent of 05 Acres.

According to the Affidavit dated 05.06.2008 by the Petitioner namely Jen Seling, the said premises more fully described as lot 204 in plan bearing no 226 dated 18.11.1998 marked as ‘P3’. The Petitioner has stated that access given to said lot 204 through a 40 feet road more fully depicted as lot 206 in the said Plan [P3].

Although the Petitioner had stated in his Affidavit that the disputed access road claimed by the Petitioner to access the business premises is in Lot 206, this was incorrect and it was corrected by the Petitioner as lot 205 in his Counter affidavit dated 24.07.2008.

Furthermore, the Petitioner had stated that Respondent too was allocated premises to carry out a business in the same industrial zone.

The Petitioner alleged that the Respondent had taken steps to erect a structure in the access road given to Petitioner through lot 206 marked as 'Y' in Plan 'P3' which has prevented the Petitioner from accessing lot 204, his business premises.

Therefore, it is abundantly clear that the dispute relates to an access road to the Petitioner's business premises over lot 205, thus the learned Magistrate has very correctly applied Section 69 (1) of the Primary Court Procedure Act to resolve the dispute.

In this instance, Court draws attention to document 'ච4' issued by the Regional Director of Industries of the Industrial Development Ministry dated 14.08.2008, addressed to the Respondent.

මාර්ග පහසුකම් සැලැස්ම

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නව මාර්ග පද්ධතියේ සිතියමේ A2 මාර්ගයෙන් ලලිත ප්‍රොඩක්ට්ස් ආයතනයටත්, පැන්ඩා ග්‍රූප්ස් ආයතනයටත් මර්ග පහසුකම් ලබා ගැනීමට පහසුකම් සලසා ඇත.

එ අනුව පැන්ඩා ග්‍රූප්ස් ආයතනයට ලබා දී ඇති ඉඩම් කොටසට [Blocking out Plan] හි A2 දරණ ප්‍රවේශමාර්ගය වෙන්කර දී ඇත.

එසේ ප්‍රවේශ මාර්ගයෙන් වෙන්කර දී තිබියදී පැන්ඩා ග්‍රූප්ස් ආයතනය විසින් අනවසර ගේට්ටුවක් සවිකර ඇත. එම අනවසර ගේට්ටුව ලොට් 24ට ප්‍රවේශ වන පරිදි සකස් කිරීමෙන් ලොට් 24හි කර්මාන්ත කාරියට ඇයගේ කටයුතු කරගෙන යාම දුෂ්කර වී ඇත. එසේම මාර්ග සඳහා අනවශ්‍ය ලෙස ඉඩම අපතේ යාමක් ද සිදුවේ. අනවසර ගේට්ටුව ඉවත්කර Road A2ට ප්‍රවේශ වන පරිදි පැන්ඩා ග්‍රූප්ස් ආයතනයට උපදෙස් දී ඇති නමුත් එම උපදෙස් නොපිලි පැදීම නිසා මෙම ආරවුල හට ගෙන ඇත.

තවද ලොට් 205 දරණ බිම් තීරුව කර්මාන්ත පුර්යේ ආරක්ෂිත (Buffer Zone). බිම් තීරුව වශයෙන් වෙන්කර, එහි වැට ගසා ඇති අතර ඒ ලොට් 205 තුළින් කිසිවෙකුටත් ප්‍රවේශ මාර්ග ලබා දී හෝ ප්‍රවේශ මාර්ග පාවිච්චි කරන්නේ නැත.

In view of the said letter 'ච4' the disputed roadway belongs to the state, hence the Appellant cannot claim any prescriptive right, over the disputed roadway.

According to Section 69(1) of the Primary Court Procedure Act, it is the burden of the Appellant to establish that the Appellant is entitled to use the impugned roadway as of right.

In view of the findings of the learned Provincial High Court Judge, it is my considered opinion that according to said letter '04', the Petitioner is not entitled to use the disputed road access as of right.

The learned High Court Judge has stated in his Order dated 20.09.2017,

‘මෙම නඩුවේ පෙත්සම්කරුට ව2 දරණ පිඹුරට අනුව කැබලි අංක 25 දරණ කොටස ලබා දී ඇති අතර ඔහුට A2 මාර්ගය ඒ අනුව භාවිතා කිරීමට හැකියාවක් ඇති අතර, නමුත් එකී පිඹුර පරීක්ෂා කිරීමේදී පැහැදිලි වන්නේ වග උත්තරකාරියගේ ඉඩම තුළින් A2 දරණ මාර්ගය පෙත්සම්කරුගේ ඉඩමට ප්‍රවේශ වීම සඳහා ලබා දී නොමැති බවය.

තවද පෙත්සම්කරුගේ ඉඩමට ප්‍රවේශ වීම සඳහා වග උත්තරකාරියගේ ඉඩම තුළින් නොගොස් A2 මාර්ගයෙන් ප්‍රවේශ මාර්ගය සකස් කර ගැනීම සඳහා වැඩි ඉඩ ප්‍රස්ථාවක් අති බව පැහැදිලි වේ. ඒ අනුව A2 දරණ මාර්ගය වග උත්තරකාරියගේ ඉඩම ආරම්භයෙන් අවසන් වන බැවින් ඇයගේ ඉඩම හරහා කිසිදු අයිතිවාසිකත් පෙත්සම්කරුට නොමැත.’

As rightfully identified by the learned Magistrate Appellant already has a road access marked as A2.

The learned High Court Judge has determined that the Order of the Learned Magistrate is correct in facts and in law.

It appears that the learned High Court Judge had analysed and evaluated the evidence placed before the learned Magistrate and affirmed the said order of the learned Magistrate. Therefore, it is seen that the Order of the Learned High Court Judge is well-founded.

As such, we see no reason for us to interfere with the Order dated 20.09.2017 by the learned High Court Judge as well as the Order dated 29.01.2009 by the Learned Magistrate.

Hence, the order appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**