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

C A.(PHC) 122/2010

PHC Gampaha 1/2008 Writ

Gajasinghe Janak Prasad De Silva and Preethika De Silva of No.2D, Horakelewatte, Horagasmulla, Divulapitiya.

PETITIONER-APPELLANTS

Vs.

L.P. Harischandra,

No.72, Horagasmulla, Divulapitiya

PLAINTIFF-RESPONDENT

M.H. Abeysinghe Bandara,

Assistant Commissioner of Agricultural Development,

Sri Bodhi Road, Gampaha and two others.

RESPONDENTS-RESPONDENTS

BEFORE: A.W.A.SALAM,J & SUNIL RAJAPAKSE, J

COUNSEL: Dr. Sunil Cooray for the Petitioner and Anusha Samaranayake SSC for the 2nd, 3rd and 4th respondents.

ARGUED ON: 20.01.2014

DECIDED ON: 26.08.2014

A.W.A. SALAM, J. (P/CA)

This appeal has been preferred against the judgment of the learned High Court Judge dated 6 October 2010. By the said judgment the learned High Court Judge dismissed an application made by the petitioners-appellants (referred to in the rest of this judgment as the "appellants") seeking a writ of *cetiorari* to quash the order made by the 2nd respondent-respondent (referred to in the rest of this judgment as the "2nd respondent") and the order made in the proceedings of inquiry held into the complaint of the 1st respondent-respondent (referred to in the rest of this judgment as the "1st respondent") by the 2nd and 3rd respondents-respondents (referred to in the rest of this judgment as the 2nd respondent and/or 3rd respondent as the case may be).

The learned High Court Judge dismissed the application for a writ of certiorari upholding the preliminary objection that she has no jurisdiction to entertain an application for a prerogative writ by reason

of the decision of the Supreme Court in M. P Wijesooriya vs Nimalawathie Wanigasingha and others (SC appeal No 33/2007-SC (SPL) L.A No 41/07.

The decision in M. P Wijesooriya vs Nimalawathie Wanigasingha and others needs to be discussed at the outset with a view to ascertain the applicability of it to the present appeal. In that case, the landlord of a paddy field complained against the tenant cultivator of his failure to provide the due share of the paddy yield as per agreement between the two. An inquiry was held into the complaint by the Assistant Commissioner of the Agrarian Services of the relevant area and order was made against the tenant cultivator directing him to provide the due share of the paddy yield to the owner of the paddy field. As the tenant cultivator failed to provide the due share of the paddy yield, the Assistant Commissioner issued a quit notice on the tenant cultivator. Aggrieved by the said decision of the Assistant Commissioner, the tenant cultivator preferred an appeal to the Commissioner General of Agrarian Development who ordered the setting aside of the findings and order of the Assistant Commissioner.

Aggrieved by the order of the Commissioner General of Agrarian Development the owner of the paddy field invoked the writ jurisdiction of the Provincial High Court of the area seeking to have the decision of the said Commissioner General reviewed. The High Court

in the exercise of its writ jurisdiction granted relief to the landlord (owner of the paddy field).

The litigation did not end at that point. The tenant cultivator thereupon chose to invoke the revisionary jurisdiction of the Court of Appeal under Article 138 of the Constitution to have the decision of the High Court revised and set aside on the ground that the High Court lacked jurisdiction to review an order/decision made by the Commissioner General. At the conclusion of the revision application thus filed, the Court of Appeal held that the High Court in fact lacked jurisdiction to review the order/decision of the Commissioner General. The tenant cultivator remained dissatisfied with the decision of the Court of Appeal and therefore sought special leave to appeal to the Supreme Court on the question as to whether the Court of Appeal had erred in law by holding that the Commissioner General of Agrarian Development is not an officer exercising powers within the Province.

The above question was raised by the tenant cultivator in the Supreme Court, mainly because Article 154 (4) (b) of the Constitution empowers the High Court inter alia to issue writs of certiorari, prohibition and mandamus against any person exercising powers within the Province.

It may be useful at this stage to reproduce the relevant Article of the Constitution which empowers the High Court to issue writs. It reads as follows..

> 154 P (4).
> Every such High Court shall have jurisdiction to issue, according to law
>
> (b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under (i) any law; or (ii) any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List.

Act No 19 of 1990 provides for matters regarding the procedure to be followed in, and the right of appeal to, and from, the High Court established under Article 154P of the Constitution; and for matters connected therewith or incidental thereto. In terms of Section 3 of the said Act titled High Court of the Provinces (Special Provisions) Act, provides that a High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under Section 5 or Section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province.

In the case of **WERAGAMA vs EKSATH LANKA WATHU KAMKARU SAMITHIYA AND OTHERS** 1994 Sri Lanka Law Reports volume 1 at page 293, the Supreme Court held inter alia that under Article 154P, introduced by the

Thirteenth Amendment to the Constitution, the High Courts of the Provinces had not been conferred with the jurisdiction to issue writs of whatever nature in respect of the orders, awards and decisions of the Labour Tribunals.

Referring to the background in which the 13th Amendment to the Constitution was passed the judgment in the case of **WERAGAMA** found that the Thirteenth Amendment of the Constitution revealed no intention on the part of the Legislature to devolve judicial power. The court observed in that case that it was merely a re-arrangement of the jurisdictions of the judiciary. In the circumstances, the Supreme Court further held that to endorse the view that a liberal interpretation should be adopted with regard to the powers of the High Court and to hold that the High Court is vested with powers to issue writs of whatever nature against the decisions of Labour tribunal would be a clear trespass into the Legislative domain. Hence, the Supreme Court in the case expressed in no uncertain language that Article 154P, introduced by the Thirteenth Amendment, conferred no writ jurisdiction in respect of Presidents of Labour Tribunals.

The same interpretation given in respect of Labour Tribunals also should be adopted in respect of the decisions of the Agrarian Development Act No 46 of 2000 subject to the variation as to whether a particular decision has been given by an officer under the said Act at a provincial level or in the exercise of island wide powers.

The learned High Court Judge in the impugned order placed reliance in the judgment of M. P Wijesooriya vs Nimalawathie Wanigasingha referred to above. The pith and substance of the judgment in that case is that the exercise of the island wide powers by the Commissioner General of Agrarian Development within the domain of the jurisdiction of the Court of Appeal and not the High Court.

The impugned order in this case has been made by the Assistant Commissioner placed at the Provincial level but not in the exercise of his island wide powers. In other words, the Assistant Commissioner who made the impugned order is not empowered to make a similar order outside the area to which he is appointed. No doubt he has exercised the powers of the Commissioner General under Section 38 (5) which empower him to exercise all or any of the Powers of the Commissioner-General within the area to which such Assistant Commissioner is appointed.

In the circumstances, the impugned order cannot be taken as one that has been delivered by the Commissioner General. When the Assistant Commissioner exercises the powers given to the Commissioner General at Provincial level, in my opinion he exercises powers vested in him on provincial basis. In the circumstances, the judgment cited by the learned High Court Judge as being applicable to decide the question of jurisdiction is not relevant to the instant appeal.

As such, the learned High Court Judge has clearly misdirected himself with regard to the applicability of the decision in the case of M. P Wijesooriya vs Nimalawathie Wanigasingha and others (SC appeal No 33/2007-SC (SPL) L.A No 41/07.

Hence, this appeal is allowed and the impugned judgment of the learned High Court Judge is set aside. Accordingly, the case is sent back to the High Court to consider the application of the "appellants" on its merits.

Appeal allowed and case sent back to the High Court for re-hearing. (Emphases are mine)

President/Court of Appeal

Sunil Rajapakse, J

I agree

Judge of the Court of Appeal