

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

**C.A. (PHC) No. 164/2010**

P.H.C. Balapitiya No. 798/2010

M.C. Balapitiya No. 7490

W. Sunil  
Karandeniya.

**Petitioner**

**Vs.**

Commissioner  
Agrarian Development  
Galle District.

**Respondent**

**C.A. (PHC) No. 164/2010**

**P.H.C. Balapitiya No. 798/2010**

**M.C. Balapitiya No. 7490**

Before : **K. T. Chitrasiri, J &**  
**W.M.M. Malinie Gunarathne, J.**

Counsel : D.M.G. Dissanayake for the Respondent-  
Respondent-Appellant  
M. Jayasinghe S.C. for the Plaintiff-  
Petitioner –Respondent

Argued &

Decided on : 16.09.2014

**K. T. Chitrasiri, J.**

Heard both Counsel in support of their respective cases.

At this stage learned Counsel for the appellant submits that his application to this Court is merely to obtain an opportunity to show cause, before making an order by the Magistrate on the application made in the case bearing No. 7490 filed in the Magistrate's Court.

Learned State Counsel submits that he has no objection to afford an opportunity for the appellant to show cause as to why an order should not be made as prayed for in the application filed in the Magistrate's Court.

Having perused the order of the learned High Court Judge, this Court observes that his decision is to direct the learned Magistrate to proceed with the matter in terms of the Provisions contained in the Act No. 46 of 2000. Therefore, it is clear that the said order of the learned High Court Judge does not prevent the appellant showing cause before the Magistrate making an order on the application filed by the respondent. Accordingly, we are not inclined to interfere with the findings of the learned High Court Judge.

However to make it clear, we direct that the learned Magistrate should afford an opportunity for the appellant to show cause before making an order in the application filed under Section 33 (3) of the Act No. 46 of 2000 and to proceed with the matter as directed by the learned High Court Judge.

Accordingly, we do not see any reason to interfere with the decision of the learned High Court Judge.

For the aforesaid reasons, this appeal is dismissed  
without costs.

*Appeal dismissed*

**JUDGE OF THE COURT OF APPEAL**

**M.M.M. Malinie Gunarathne, J.**

I agree

**JUDGE OF THE COURT OF APPEAL**

/mds