

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

In the matter of an appeal  
against the Judgment dated  
04/07/2011 in the Provincial  
High Court of the North  
Western Provincial (Holden at  
Kurunegala) Case  
No.NWP/HCCA/KUR/12/2010  
(WRIT)

Mahipala Mudalige Sunil  
Premaratne Paris,  
Thambagalla, Kakkapalliya.

**CA(PHC) Appeal 107/2011**      **01.** Madampe Multi – Purpose  
Co-operative Society, Now Town,  
Madampe.

PHC NWP (Writ) Application No.

NWP/HCCA/KUR/12/2010 (Writ)

**02.** Ms. Padmini Kariyawasam,  
Commissioner/Registrar of Co-  
operative Development – North  
Western Province, Co-operative

Development Department, 1<sup>st</sup>  
Floor, Office Complex of North  
Western Provincial Council,  
Kurunegala.

**03.** Ms. Kumari Weerasekera,  
Deputy Chief Secretary, Former  
Commissioner/Registrar of Co-  
operative Development – North  
Western Province, Co-operative  
Development Department, 1<sup>st</sup>  
Floor, Office Complex of North  
Western Provincial Council,  
Kurunegala.

**04.** Mr. R.P. Ranasinghe,  
Secretary, Madampe Multi –  
Purpose Co-operative Society  
Limited, New Town, Madampe,

**05.** Mr.U.K.D. Palitha Rohana,  
Chairman, Madampe Multi-  
Purpose Co-operative Society  
Limited, New Town, Madampe.

**06.** P.J. Paul Kingsley

**07.** E.G.S.De Silva

**08.** R.P.S.T. Randunu

**09.** P. Raymond Jayaratne

**10. M.M. Sameera Heshan Paris**

**11. D.M. Ginendra Sampath**  
Dissanayake

All of Madampe Multi – Purpose  
Co-operative Society Limited,  
New Town, Madampe.

**12. Mr. L.C.L.S. Mahanama,**  
Deputy Commissioner of Co-  
operative Office Complex of  
North Western Provincial  
Council, Kurunegala.

**13. Mr. R.P. Sunilratne,** Acting  
District Co-operative of  
Development Officer – Co-  
operative Development  
Department, 1<sup>st</sup> Floor, Office  
Complex of North Western  
Provincial Council, Kurunegala.

**14. J.W. Jayawardena,**  
Pambala, Kakkapalliya.

### **Respondents**

#### **And now between**

Mahipala Mudalige Sunil  
Premaratne Paris, Thambagalla,  
Kakkapalliya.

**Petitioner – Appellant**

**Vs.**

**01.** Madampe Multi – Purpose  
Co-operative Society, New Town,  
Madampe.

**02.** Ms. Padmini Kariyawasam,  
Commissioner/Registrar of Co-  
operative Development – North  
Western Province, Co-operative  
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Floor, Office Complex of North  
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Provincial Council, Kurunegala.

**14.** J.W. Jayawardena,  
Pambala, Kakkapalliya.

**Respondent – Respondents**

**Before : W.M.M.Malinie Gunarathne, J**  
**: P.R.Walgama, J**

**Counsel : Chandana Wijesooriya for the appellant.**  
**: Senior DSG Neil Ynamboowa for 2,3,12,8,13**  
**Respondent – Respondent.**

**Argued on : 09.11.2015**

**Decided on: 26.04.2016**

**CASE-NO-CA-(PHC) 107/2011- JUDGMENT- 26.04.2016**

**P.R.Walgama, J**

The instant appeal concerns the application made by the Petitioner – Appellant, sequel to the order made by the Learned High Court Judge dismissing the Petitioner - Appellant's application for an issuance of a mandate in the nature of a Writ of Certiorari to quash the decision of the 3<sup>rd</sup> Respondent enumerated in the Documents marked P12 and P13.

The brief facts necessary to dispose of this appeal are mentioned here under;

The Petitioner – Appellant was member of the 1<sup>st</sup> Respondent Multi purpose Co-operative Society.

By a Special General Meeting of the 1<sup>st</sup> Respondent Society, held on 29.02.1992, a resolution was passed to enable the 1<sup>st</sup> Respondent to purchase lands and block them out and sell them, for the purpose of gaining some benefits to the 1<sup>st</sup> Respondent Society. Pursuant to the afore said the Board of Directors on 13.07.2000 passed a resolution in order to purchase the land called 'EGODAWATTE' for the above purpose.

Consequently, the said land was blocked out and was re- named as President Park.

The Petitioner opted to purchase a block and accordingly the 1<sup>st</sup> Respondent transferred the lot No. 35 of the afore said land more fully depicted in plan No. 2300 dated 16.09.2000, and by deed bearing No. 340 dated 28.07.2001 attested by Notary Public Gamini Hearth for sum of Rs. 150,000/.

It was discovered and was informed that the sale to the Petitioner, 6<sup>th</sup> and the 8 Respondents (who also purchased the blocks from the said

land) that the 1<sup>st</sup> Respondent had incurred loss of Rs. 182,000/ by selling the lands to the Petitioner as well as to the other two Respondents.

Further it is said that the 12 Respondent by his letter dated 28.09.2009 authorized the 13<sup>th</sup> Respondent to hold an inquiry in terms of Section 46(1) of the Co-operative Societies Act No. 05 of 1972, to determine whether a loss of a Rs.482,000/ was caused to the 1<sup>st</sup> Respondent by selling of the blocks of land from the President Park project to the Petitioner, 6<sup>th</sup> Respondent and the 8<sup>th</sup> Respondent for a lesser price.

The 3<sup>rd</sup> Respondent by a letter dated 12.04.2010 ordered the Petitioner to pay a sum of Rs. 160,000/ within 30 days thereof,

Subsequent to the afore said the 1<sup>st</sup> Respondent had granted another 60 days for the Petitioner to vacate the suit premises.

The ground norm of the argument of the Petitioner – Appellant's is that the 1<sup>st</sup> Respondent Society did execute the deed marked P6 by which the disputed land was transferred in favour of the Petitioner – Appellant, of course for a valuable consideration.



It is also contended by the Petitioner – Appellant that the 1<sup>st</sup> Respondent has sold certain lots for a lesser price than that was decided initially.

Further it is alleged by the Petitioner - Appellant that the 3<sup>rd</sup> Respondent failed to afford an opportunity to the Appellant to be heard which contravenes the proviso to Section 66(1) of the Act.

Hence in the above setting the Petitioner-Appellant moves for the following reliefs inter alia;

For an order in the nature of a Writ of Certiorari quashing the orders of the 3<sup>rd</sup> Respondent enumerated in the documents marked P12 and P13.

For an order in the nature of a Writ of Certiorari quashing the findings of the said inquiry held in terms of Section 46 (1) of the Act in to the purchase of the said lot 35 of PRESIDENT PARK land by the Petitioner.

In objecting to the above suit of the Petitioner-Appellant the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents planked their position on the following facts;

That the Petitioner -Appellant has moved for time to vit. 90 days to pay the said amount of Rs. 162,000/, and it is improper for the Petitioner to

seek relief as moved for when he had time to pay the said amount.

Besides it is stated that the 6<sup>th</sup> and the 8<sup>th</sup> Respondents who also faced the same charges has already paid the estimate amount to the 1<sup>st</sup> Respondent Society.

The Learned High Court Judge by his judgment dated 4<sup>th</sup> July 2011 dismissed the Petitioner-Application on the following grounds;

It was observed by the Learned High Court Judge that the document marked P12, the order directing the Petitioner-Appellant to pay the balance sum due on the sale of lot 35 has been made in terms of Section 66(1)(a) of the Co-operative Societies Act No.15 of 1972 as amended by Acts No. 32 of 1983 and No. 11 of 1992.

Further it is to be noted that the 3<sup>rd</sup> Respondent has afforded an opportunity for the Petitioner - Appellant to present his case and the Learned High Court Judge was of the view that an inquiry has been held and had commented on the fact that the Petitioner - Appellant ~~by his letter~~ <sup>letter</sup> dated 15<sup>th</sup> April 2010 sought 90 days to settle the amount due in full. The said letter marked as 2R2 does not indicate the fact that he was seeking to canvass the validity of

the inquiry held or the decision of the 3<sup>rd</sup> Respondent to recover the money.

Thus the Learned High Court Judge was of the view that there is no reason to set aside the decision of the 3<sup>rd</sup> Respondent to recover the money due to the 1<sup>st</sup> Respondent Society.

The Petitioner - Appellant being aggrieved by the said determination of the lower Court appealed to this court to have the said order set aside.

The Petitioner- Appellant in asserting the facts stated above has assailed the impugned order on the grounds stated below;

That the Learned High Court Judge has erred in arriving at the conclusion that the law does not expect the 3<sup>rd</sup> Respondent to hold an inquiry in terms of Co-operative Societies Act No. 5 of 1972.

That the Learned High Court Judge has failed to consider that , to recover money as per document marked P12, is made contrary to law and violation of legitimate expectation of the Petitioner - Appellant.

The 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents has reiterated the following facts;

That the said impugned order has been made by the 3<sup>rd</sup> Respondent in terms of Section 66(1)(a) of the Co-operative Societies Act No. 05 of 1972 which has been marked as P12.

That the Petitioner-Appellant has filed a writ application in the High Court of Kurunegala only after two months of the pronouncement of the said impugned order. In addition it is said that the document marked as P13 is not an order but only a letter, therefore as it is there is no order in force to be quashed by way of a writ of certiorari.

It is also contended by the Respondent that the Petitioner - Appellant has not disclose material facts vis a-vis the document marked 2V1. The pith and substance of the Respondent's case is the above said lots had been purchased for a lesser price which is much below the market value of the suit property.

The Respondent has also adverted Court to the fact the Petitioner - Appellant's undertaking to pay the said amount of Rs. 162,000/ within 60 days by his letter dated 15.04.2010, which is marked as 2V2.

Hence when the said impugned order is reviewed in the above back drop I am of the view that the said order is unattended with error.

Thus the appeal is dismissed subject to a cost of Rs. 10,000/.

Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**