

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

**In the matter of an application for
revision and/or restitution under
Article 154(P) of the Constitution
read with Provincial High Courts
Act No.19 of 1990 (Special Provision),
against the Judgment in Case No.
SP/HCCA/GA/WRIT/05/2009 dated
10.06.2010.**

Kodagoda Dayaseeli Serasundara
No.1/30B,
Wackwella Road,
Galle.

Petitioner

Case No. SP/HCCA/GA/WRIT/05/2009
CA (PHC) APN 121/2010

VS.

- 01 Assistant Commissioner of Agrarian
Development,
Agrarian Development Department,
Galle District Office,
Labuduwa, Galle.
- 02 Bertici Gunawardane,
No.32/181, Tissa Mawatha,
Galawilawatta,
Homagama.
- 03 Kathaluwa Liyanage Upali
No.367/1, Wackwella Road,
Galle.

- 04 Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondents

AND NOW BETWEEN

Kodagoda Dayaseeli Serasundara,
No.1/30B,
Wackwella Road,
Galle.

Petitioner-Petitioner

- 01 Assistant Commissioner of Agrarian
Development,
Agrarian Development Department,
Galle District Office,
Labuduwa, Galle.
- 02 Bertici Gunawardane,
No.32/181, Tissa Mawatha,
Galawilawatta,
Homagama.
- 03 Kathaluwa Liyanage Upali,
No.367/1, Wackwella Road,
Galle.
- 04 Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondents.

**BEFORE: W.M.M. Malinie Gunaratne, J. &
P.R. Walgama, J.**

COUNSEL: Mahinda Nanayakkara and Sammith Dissanayake
for the Petitioner.

Chaya Sri Nammuni, S.C. for the 1st and 4th Respondents.

Michael Wannappa for the 2nd Respondent.

Argued on: 26.03.2015.

Written Submissions filed on: 01.09.2015 and 15.09.2015

Decided On: 30.09.2015

Malinie Gunaratne, J.

This is a Revision Application preferred by the Petitioner, seeking to set aside the Order of the Learned High Court Judge of the Civil Appellate High Court, of Galle, dated 10/06/2010.

When the application was taken up for hearing on 12.03.2015, the Counsel for the 2nd Respondent raised a preliminary objection as to the maintainability of this application.

It was agreed by both parties to file written submissions on the question of the preliminary objections that were raised relating to the maintainability of this action.

The contention of the learned Counsel for the 2nd Respondent is, since the impugned order had been made by the learned High Court Judge of the Civil

Appellate High Court holden in Galle, the Petitioner cannot invoke the jurisdiction of this Court with regard to the impugned order. Further, he has contended, that since the power to issue orders in the nature of writs was given to the High Courts under Article 154 P (4), only the Supreme Court can revise an order which is of the nature of the order canvassed in this Revision Application.

The contention of the learned Counsel for the Petitioner is, according to the circular which was applicable at that time the Petitioner had to invoke the jurisdiction of the Civil Appellate High Court. This fact is not disputed by the Respondents.

Having stated the submissions made by both Counsel, let me now turn to consider the legal position of the preliminary objection which was raised by the 2nd Respondent.

The powers laid down in Article 154 P (4) clearly shows the jurisdiction of the Provincial High Courts to issue orders in the nature of Writs. The said Article is as follows:-

Every such High Court shall have jurisdiction to issue according to law :-

(b) Orders 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

Under Article 154 P (6) an appeal may be made in accordance with Article 138 to the Court of Appeal from a final order, judgment or sentence of the Provincial High Court made under Article 154 P (4) (b). As such the appellate

jurisdiction lies with the Court of Appeal in the case of writs, which are issued by the Provincial High Court.

Hence, now the sole question arising for decision in this case is, since the impugned order had been made by the learned Civil Appellate High Court Judge, whether the Petitioner can invoke the jurisdiction of this Court or should have invoked the jurisdiction of the Supreme Court.

It is relevant to note, that the Civil Appellate High Court had been exercising writ jurisdiction according to the circular, issued by the Honourable Chief Justice, which was applicable at the time when the Petitioner invoked the jurisdiction of the Civil Appellate High Court and the impugned Order had been pronounced by the learned High Court Judge acting on that circular as the High Court Judge, holden Southern Province in Galle. Furthermore, it is important to note, that there is no applicable provisions to make an appeal to the Supreme Court, with regard to the orders or judgments pertaining to a writ application heard by the Civil Appellate High Court of the Province.

The Petitioner in this case had invoked the jurisdiction of the Civil Appellate High Court, according to the circular issued at that time and it is important to note, that the Respondents had not raised any jurisdictional objection there. This Court cannot find fault with the Petitioner and deprive the right of appeal of the Petitioner on an administrative function, since the Petitioner had to act according to the circular prevailing at that time. Hence, I am of the view, it is an administrative function of the High Court and there is no question with regard to the jurisdiction of the High Court.

Hence, as far as the instant case is concerned, I am unable to agree with the contention of the learned Counsel for the 2nd Respondent, that the Petitioner

cannot invoke the jurisdiction of this Court with regard to the impugned order made by the learned High Court Judge of the Civil Appellate High Court of Galle.

Taking into consideration all the facts and submissions made in this case, I reject the contention of the learned Counsel for the 2nd Respondent and overrule the preliminary objections raised by him.

The view of this Court is under Article 154 P (b), the Petitioner is entitled to invoke the jurisdiction of this Court.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL