

**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 against judgment of  
Provincial High Court exercising its writ  
jurisdiction.

C A (PHC) / 74 / 2007

Provincial High Court of

Sabaragamuwa (Rathnapura)

Case No. HCR/WA 03 / 2004

Peli Arachchige Wijaya Amararathna,  
Halpawala,  
Panawenna,  
Kahawaththa.

**3<sup>RD</sup> RESPONDENT - APPELLANT**

-Vs-

1. Divisional Secretary,  
Divisional Secretariat Office,  
Pelmadulla.
2. Provincial Land Commissioner,  
Provincial Land Commissioner's  
Office,  
Rathnapura.

**RESPONDENT - RESPONDENTS**

3. Weralupe Hemachandra,  
Halpawala,  
Panawenna,  
Kahawaththa.

**PETITIONER - RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Thushani Machado for the 3<sup>rd</sup> Respondent - Appellant.

Wasantha Athapaththu for the Petitioner Respondent.

Suranga Wimalasena SSC for the Attorney General.

Argued on: 2017-07-14

Decided on : 2017 - 08 - 30

### JUDGMENT

## **P Padman Surasena J**

The Petitioner- Respondent (hereinafter sometimes referred to as the 3<sup>rd</sup> Respondent) had filed an application in the Provincial High Court holden at Rathnapura praying for a writ of certiorari to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondent-Respondents (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent respectively) to revoke the permit and or Jayabhumi deed No. 44535 issued to the 3<sup>rd</sup> Petitioner Respondent. This is so stated in prayer c of the prayers in the application made to the Provincial High Court.

Perusal of the averments in the said application shows clearly that the expectation of the 3<sup>rd</sup> Respondent from the said proceedings before the Provincial High Court had been to get a permit and or Jayabhumi deed issued to the 3<sup>rd</sup> Respondent Appellant in terms of the provisions of the Land Development Ordinance revoked. Thus this application is clearly with regard to something pertaining to alienation of state lands.

At the commencement of the argument of this case, learned Senior State Counsel submitted that this case is not maintainable in view of the judgment of the Supreme Court in the case of The Superintendant, Stafford Estate and two others Vs. Solaimuthu Rasu<sup>1</sup>.

The Supreme Court in that judgment had clearly held that the jurisdiction conferred on the Provincial High Courts under Article 154 P 4(b) does not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of State lands since they are not found in the Provincial Council List (List 1) to the 9<sup>th</sup> Shedule to the 13<sup>th</sup> amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

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<sup>1</sup> 2013 (1) Sri. L. R. 25.

Article 154 (P) 4(b) of the Constitution states that a Provincial High Court shall have jurisdiction to issue, according to law:

Orders in the nature of writs of Certiorari, Prohibition, Procedendo, Mandamus and quo Warranto against any persons exercising within the province, any power under:

- I. Any law; or
- II. Any statute made by the Provincial Council established for that province; in respect of any matter set out in the Provincial Council List.

Perusal of the learned Provincial High Court Judge's Judgment shows that he has failed to consider the preliminary objection to the jurisdiction of the Provincial High Court raised on the above basis on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

It is now settled law that the Provincial High Court does not possess jurisdiction to issue under Article 154 P 4(b) writs of this nature in respect of matters relating to alienation of state lands since such a subject is not found in the Provincial Council List (List 1) to the 9<sup>th</sup> Shedule to the 13<sup>th</sup> amendment to the Constitution of the Democratic Socialist Republic of Sri

Lanka. Hence it is clear that the judgment pronounced by the Provincial High Court in this case has been done without any jurisdiction in that regard.

Therefore the judgment dated 2007-05-10 entered into by the learned Provincial High Court Judge is hereby set aside. The application made to the Provincial High Court must stand refused and dismissed. No Cost is ordered.

Appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**