

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

In the matter of an Appeal to Court of
Appeal against a judgment of Provincial
High Court exercising its writ
jurisdiction.

C A (PHC) 184 / 2011

Provincial High Court of

Western Province (Gampaha)

Case No. 04 / 2008 (Writ)

Dulma Dorathy Valentina,

No. 142,

Church Road,

Kongodamulla

Katana.

PETITIONER - APPELLANT

-Vs-

1. H M Abeygunasinghe Banda,

Assistant Commissioner of

Agrarian Development,

District Office,

Sri Bodhi Road,

Gampaha.

2. Commissioner of Agrarian

Development,

Office of the Agrarian

Development Commissioner,

Sir Marcus Fernando Mawatha,

Colombo 07.

3. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel; Buddika Gamage for the Petitioner - Appellant.

M. D. Wickramanayake for the state instructed by SSA A.

Shanmuganathan

Decided on : 2018 - 01 - 18

JUDGMENT

P Padman Surasena J (P/CA)

Learned counsel for both Parties, when this case came up on 2017-07-26 before this Court, agreed to have this case disposed of, by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they had already filled. Therefore, this

judgment would be based on the material adduced by parties in their pleadings and the written submissions.

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court praying for a writ of Certiorari to quash the decision of the 1st and 2nd Respondent- Respondents (hereinafter sometimes referred to as the 1st and 2nd Respondents respectively) contained in the letter dated 2008-04-16. That is a letter by which the 1st Respondent had informed the Appellant that it has been found that no obstruction has been caused to the agricultural road relevant to the dispute in this case.¹

It is to be noted that it is the Appellant who had lodged a complaint to the Agrarian Services Development Commissioner requesting him to conduct an inquiry with regard to an alleged obstruction caused to the relevant agricultural road. She had produced her complain before the Provincial High Court Marked 00 01. It is consequent to that complaint that the 1st and 2nd Respondents had conducted the relevant inquiry. Thus, it is clear that this inquiry would not have been conducted if not for the request made by the Appellant.

¹ The said letter has been produced in the Provincial High Court Marked 00 4

The Respondents after conducting the inquiry had come to a finding which is adverse to the Appellant. The Appellant has explained in paragraph 21 of her written submissions, the reason as to why she wishes to have the said decision quashed. According to her it is because the quashing of the said decision would automatically give effect to the previous directive and decision made by the 1st and 2nd Respondents. Admittedly it is the wish of the Appellant to get the previously existed order executed after getting the second decision quashed by way of a writ of certiorari. That is the explanation, the Appellant has adduced for his failure to seek a writ of Mandamus for a fresh inquiry to be held. It is to be noted that this explanation has been put forward in response to the comment by the learned Provincial High Court Judge on the failure of the Appellant to pray for a writ of Mandamus.

In the above circumstances question arises as to why the Appellant lodged a second complaint to the 1st and 2nd Respondents knowing very well about the presence of a previous decision which she claims, is in her favour. It is the said previous decision which the Appellant is planning to enforce now.

Further, if the dispute she complained of, had been inquired into and decided by the 1st and 2nd Respondents previously, there cannot logically

be any reason as to why the Appellant would have wanted to re agitate the same dispute again. This conduct on the part of the Appellant would only show that she has kept changing her positions. This is a factor which directly affects the credibility of the positions she had taken. Further, such conduct on her part leads this Court to believe that the Appellant is indirectly attempting to overturn the decision of the 1st Respondent for the mere reason that it has become adverse to her.

An applicant in a writ application must come to court with clean hands. He or she cannot have a hidden agenda. The hidden agenda of the Appellant in the instant case is clear from the above facts more particularly, from the fact that she has not prayed for a writ of Mandamus to conduct a fresh inquiry.

Writ jurisdiction of Court is discretionary. It is exercised at the discretion of Court. This has been clearly explained by Jayasuriya J in Jayaweera vs Assistant Commissioner of Agrarian Services Ratnapura and another [1986 (2) SLR 70] when he said "... I hold that the Petitioner who is seeking relief in an application for the issue of a writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine...."

The Court when deciding whether to exercise its discretion, is entitled to take the conduct of the Applicant into consideration.

For the foregoing reasons it is the view of this Court that the refusal by the Provincial High Court to grant the writ sought by the Appellant is justifiable. Therefore this Court decides to dismiss this appeal with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL