

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

CA (PHC) 137/2009

PHC Kegalle 2840/Writ

Nathavitharanagalage  
Nandana

Chandra Guptha Ranathunga,  
Deraniyagala.

Petitioner-Appellant.

Vs.

Pradeshiya Sabha,  
Deraniyagala.

Respondent-Respondent.

BEFORE : A.W.A. Salam, J & Sunil Rajapaksha, J.

COUNSEL : Chathura Galhena with Manoj Gunawardana for  
the Petitioner-Appellant and Neil Dias for the Respondent-  
Respondent.

ARGUED ON: 22.01.2014

WRITTEN SUBMISSIONS TENDERED ON: 11.03.2014

DECIDED ON: 05.06.2014

A W A Salam, J

The petitioner appellant invoked the writ jurisdiction of the  
Provincial High Court seeking a writ of certiorari to quash a  
gazette notification published by the respondent declaring

dismissed the application on the basis that the petitioner has failed to give 1 month notice of the action to the Pradeshiya Sabawa under Section 214 (1) of Pradeshiyasabha Act No 15 of 1987. Section 214 (1) of the said Act reads as follows....

No action shall be instituted against any Pradeshiya Sabha .....for anything done or intended to be done under the powers conferred by this Act, or any by-law made thereunder until the expiration of one month next after notice in writing shall have been given to the Pradeshiya Sabha ..... Stating with reasonable certainty the cause of such action and the name and the place of abode of the intended plaintiff and of his attorney-at-law or agent if any in such action. (Words in Section 214(1) that are inapplicable to the present application have been omitted)

The only question that arises for consideration in this appeal is the propriety of the decision of the learned High Court Judge identifying the application for writ of *certiorari* as an "action instituted against the Pradeshiya Sabhawa".

It was contended on behalf of the appellant that the learned High Court Judge has erred in law in coming to the conclusion that the petitioner is required to give notice of the action to the respondent as contemplated in Section 214(1).

It is to be observed that the writ jurisdiction of the Court of Appeal is mainly governed by Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka. The important question that now arises for consideration is whether the unrestricted writ jurisdiction conferred upon this Court by the Constitution could be otherwise restricted in any manner by the Provisions of an ordinary Legislation as in the case of Section 214 of the Pradeshiya Sabha Act.

In terms of Article 154 (P) (4) of the Constitution every 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 person exercising, within the Province, any power under any law; or any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List.

The jurisdiction conferred on the provincial High Courts to grant orders in the nature of writs of certiorari, mandamus and *quo warranto* should be considered as untrammelled by any Legislation of ordinary nature.

It was so held in the case of Sirisena Cooray vs Thissa Dias Bandarnayake 1999 1 SLR 1, in relation to the writ jurisdiction conferred by Article 140 of the constitution. In

any event the prohibition imposed under Section 214 of the Pradeshiya Sabha Act against the institution of an action cannot be applied to an application made for the issuance of an order in the nature of a writ of certiorari under Article 154 (P) (5) of the Constitution. An action as referred to in Section 214 necessarily means an action as defined in 5 of the Civil Procedure Code. In terms of Section 5 of the Civil Procedure Code an "action" is a proceeding for the prevention or redress of a wrong. A "cause of action" in terms of Section 5 of the Civil Procedure Code would mean a wrong for the prevention or redress of which an action can be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury.

Accordingly, the reference made to an "action" and "cause of action" cannot be interpreted to be a reference made to an application filed in terms of Article 140 or 154P (5) of the Constitution.

As such, the learned High Court Judge has clearly misdirected himself when he upheld the objection raised under Section 214(1). In the circumstances, I allow the appeal and set aside the impugned order of the learned High Court Judge, dismissing the application of the petitioner on the ground of non-compliance of Section 214(1) of the Pradeshiya Saba Act.

Consequently, the application made by the appellant to the High Court of the relevant province is sent back for rehearing to enable the learned High Court Judge to examine the merits of the application and then enter judgment.

Appeal allowed. There shall be no costs.

Acting President of the Court of Appeal

Malini Gunaratna J

I agree.

Judge of the Court of Appeal

NR/-