

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

In the matter of an appeal under Article
154 (P) (6) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

G.F. Dunuwila,
237/B, Sri Kudaratwatte Mawatha,
Kandy.

C.A (PHC) No.123/2000 Applicant

H.C. Hambantota 07/2000 Vs.

1. Wimalasena Amaraweera,
Kachcheriyagama,
Tissamaharamaya.
2. Maginona Jayawardena,
Elapara,
Kachcheriyagama,
Tissamaharamaya.

Respondents

AND

Wimalasena Amaraweera,
Kachcheriyagama,
Tissamaharamaya.

**1st Respondent – Petitioner –
Appellant**

Vs.

1. K.P. Wijeratne,
Assistant Commissioner,
Agrarian Services Department,
Colombo 7.
2. Assistant Commissioner of Agrarian
Services Department,
Hambanthota.

Respondent

1. Maginona Jayawardena,
Elapara,
Kachcheriyagama,
Tissamaharamaya.

1st Respondent – Respondent

NAD NOW BETWEEN

1. Wimalasena Amaraweera,
Kachcheriyagama,
Tissamaharamaya.

1st Respondent – Respondent

Vs.

1. K.P. Wijeratne,
Assistant Commissioner,

Agrarian Services Department,
Colombo 7.

2. Assistant Commissioner of Agrarian
Services Department,
Hambanthota.

Respondent – Respondent

3. G.F. Dunuwila,
237/B, Sri Kudarawatta Mawatha,
Kandy.

**Applicant – Respondent –
Respondent**

4. Maginona Jayawardena,
Elapara,
Kachcheriyagama,
Tissamaharamaya.

**2nd Respondent – Respondent –
Respondent**

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

**Counsel : M.R. de Silva, P.C. with Nimal Hippola for the 1st
Respondent – Petitioner – Appellant.**

**: J.C. Boange for the Applicant – Respondent –
Respondent.**

: Janak de Silva, D.S.G., for A.G.

Argued on : 21.07.2015

Decided on: 18.12.2015

CASE-NO-CA(PHC)- 123/ 2000 - Order - 18.12.2015

P.R.Walgama, J

This appeal concerns the jurisdiction of the Provincial High Court to deal with the matters outside the Ninth Schedule, List 1 of the (Provincial Council List) the 13th Amendment to the Constitution.

Article 154p of the Constitution deals with the powers of the Provincial High Court.

Article 154p(4)(b) deals with the writ jurisdiction of the Provincial High Court, embodied thus;

“order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against person exercising, within the Province any power under

- a. Any law: or
- b. Any statutes made by the Provincial Council established for that Province

In respect of any matter set out in the Provincial Council list.

The 1st Respondent – Petitioner – Appellant has sought relief in terms of High Court of Provinces Act No.19 of 1990 and in terms of Article 154p(4)(b) of the Constitution, a mandate in the nature of writ of Certiorari, to quash the decision of the 1st Respondent.

The facts germane to the relief are as follows;

The subject land in this case is a land called PUNCHIMAHA KUMBURA- containing in extent 5 acres. The Landlord of the said land is Applicant – Respondent – Respondent, and the said paddy field was cultivated by the Respondent – Petitioner who is the tenant cultivator, along with one Sayaneris Amaraweera (an uncle of the Petitioner) and has paid the rental to the Applicant – Respondent.

Further it is averred by the Petitioner that his name has been entered in the register as a tenant cultivator on 02.06.1988. In the year 1995 6th of September said Sayaneris died and after his demise, the Applicant – 3rd Respondent has denied, the rights of the Petitioner to work as the tenant cultivator of the disputed land.

It is the stance of the Petitioner that his name is registered as the tenant cultivator in the said land and the Applicant – 3rd Respondent has been informed of the said registration on 24.11.1997.

The Petitioner has also averred in the petition that an inquiry was held by the Commissioner of Agrarian Services, at Hambantota had informed the Applicant – 3rd Respondent that an identity card has been issued to the Petitioner on 03.10.1988.

The said information was conveyed by the letter marked V8. In pursuant to the said letter the Applicant – 3rd Respondent by her letter dated 30.12.1997 has informed the Commissioner of Agrarian Services at Colombo, that only Sayaneris Amaraweera was cultivating the paddy field, and if any other party has been allowed to work in the disputed paddy field that alleged act deems be a violation of Section of 7,8,9 of the Agrarian Services Act No. 04 of 1991. Therefore the 3rd Respondent had urged the Commissioner of Agrarian Services at Colombo to hold a proper investigation in terms of Section 9 of the above Act.

After the said inquiry the 1st Respondent by his determination had stated that the Petitioner's appointment was illegal as it has contravened the Section 11(1) and 11(2) of the Agrarian Services Act No.59 of 1979, and as such he has held that the said appointment is invalid.

It is against the said impugned order of the 1st Respondent that the Petitioner has sought relief from this Court to quash the said order by way of a writ of Certiorari.

It is intensely relevant to note that the Petitioner is now assailing the order made by the Assistant Commissioner of Agrarian Services based in Colombo. It is the contention of the Respondents that he was exercising the powers of Commissioner General of Agrarian Services on delegation. Therefore it is said in view of the judgment of WIJESURIYA .VS. WANIGASINGHE- DECIDED ON 26.06.2008, it does not make difference, whether the order was made by the Commissioner General him self or the Assistant Commissioner who is exercising his powers under delegation.

In the above case an interpretation was given to the word 'within' in exercising powers within the province.

“ while 'within' may give rise to multiple interpretation, the only reasonable interpretation in light of the legislative history and purpose of Article 154(p)(4)(b) and indeed the 13th Amendment as a whole, is that it refers to that qualitative nature and scope of the power at issue, and not necessarily the geographic location of the person who exercised it.”

In the instant matter it is to be noted that impugned order purported to be made by the 1st Respondent after an inquiry. The said inquiry was sequent to the complaint made by the Applicant – 3rd Respondent to the Commissioner General of Agrarian Services by letter dated 03.12.1997, and which is marked as P1, the Applicant – 3rd Respondent had made an application in terms of Section 9 of the Agrarian Services Act No. 58 of 1979. It is further stated by the Respondents that although the inquiry was held at Hambantota, it was done so by the powers delegated by the Commissioner General of Agrarian Services. In fact it was the categorical position of the Respondents that in view of the interpretation given to the 'within' does not necessarily refer to the geographic location of the person who exercised it.

In the above context it is contended by the Respondents that the Provincial High Court has no jurisdiction to issue a writ of Certiorari against the decision of the 1st Respondent as he has exercised the powers of the Commissioner General of Agrarian Services, and arrived at the determination, which was impugned

by the Petitioner by way of a writ of Certiorari, in Provincial High Court.

The stance of the Petitioner -Appellant is crystallized as follows;

That the alleged inquiry was held at Hambantota by the 2nd Respondent who was Assistant Commissioner of Agrarian Services, and therefore the High Court of Province, is empowered to quash such order in terms of Article 154(P)(4) of the Constitution by issuing a writ of Certiorari accordingly.

The Petitioner – Appellant, to buttress his position has referred to the case of MADDUMA BANDA .VS. ASSISTANT COMMISSIONER OF AGRARIAN SERVICES AND ANOTHER- 2003(2)SLR- 80, was held thus;

1. “The word “agrarian” in section 9 of the Provincial Council List relates to landed property and such property could no doubt attract paddy lands and tenant cultivators of such land and hence the impugned order would be covered by said section 9 in the Provincial Council list.
2. In case of ambiguity, the enactment should be interpreted so as to give effect to its purpose. The purpose of the 13th Amendment is to give a right to an aggrieved party to have recourse to the Provincial High Court instead of having to seek relief from the Court of Appeal in Colombo.”

It is undoubted that the subject of Agrarian which deals with the matters referred to above is a devolved subject and could be resolved in the province it self. But it is intensely relevant to note that the Petitioner –Appellant has by her letter stated

above, referred the matter in dispute to the Commissioner General of Agrarian Services, at Colombo. Thereupon he delegated the powers to the 2nd Respondent hold the inquiry which is the subject matter of this action.

The Counsel for the Petitioner – Appellant has also referred to the case of NIMALARATNE .VS. ASISTANT COMMISSIONER OF AGRARIAN SERCICES -2000(3) SLR -184 which was held that;

The Agriculture and Agrarian Services is a devolved subject and had further held that if the inquiries under the Agrarian Services Act are not amenable to writ jurisdiction of the High Court of the Province, then the Article 154(p)(4) becomes meaningless. Besides it was also held that the creation of the High Court of the Provinces was to give effect to the devolution of power that arose with the 13th Amendment.

It is pertinent to note that the cases which was referred by the counsel for the Petitioner -Appellant were decided prior to the case that referred to by the Respondents.

As stated above in the case of WIJESURIYA .VS. WANIGASINGHE - decided on 26.06.2008- has given a wide interpretation to the term ‘within’ and as the above case was referred to the Commissioner General as in the case in hand it was decided that the High Court of the Province has no jurisdiction to entertain any application made under Article 154 (p)(4) of the Constitution.

In light of the above, this Court is inclined to accept the legal interpretation of the above article given in the above stated case,

and will hold that the Petitioner -Appellant has no locus standi to maintain this appeal.

Hence we dismiss the appeal subject to a costs of Rs. 5000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL