

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

CASE NO: CA/WRIT/136/2018

1. Textlon Lanka Private Limited,
No.28/1,
Hill Street,
Gampola.

And

Multilight Watta,
13.5 Mile Post,
Bandaranayakapura,
Wanathavilluwa,
Puttlam.

2. H.S.R. Goonewardene,
Multilight Watta,
13.5 Mile Post,
Bandaranayakapura,
Wanathavilluwa,
Puttlam.

Petitioners

Vs.

1. D.V. Bandulasena,
Former Commissioner General
of Agrarian Development,
Department of Agrarian
Development,
No.42, Sir Marcus Fernando
Mawatha,
Colombo 7.
2. W.M.M.B. Weerasekara,
Commissioner General of
Agrarian Development,
Department of Agrarian
Development,
No.42, Sir Marcus Fernando
Mawatha,
Colombo 7.
3. Lt. Col. H.A.D. Mahesh Kumara,
Officer in Charge,
Civil Defence Force,
Puttlam District,
Puttlam.
4. H.M. Roshan Nishantha,
Divisional in Charge,
Civil Defence Force,
Wanathavilluwa.
5. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Anil Silva, P.C., with Nandana Perera for the
Petitioners.
Dr. Charuka Ekanayake, S.C., for the
Respondents.

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

As seen from *inter alia* P24-P27, in the midst of the process to alienate a stretch of State land of about forty acres in extent in the divisional secretariat area of Wanathavilluwa on a long-term lease to the Petitioner for a wildlife conservation and reforestation project, the Commissioner General of Agrarian Development sent P32 dated 22.09.2017 to the Petitioner asking him to cultivate with paddy “compulsorily” and “efficiently” an uncultivated area of paddy land in extent of eight acres within the aforesaid forty acres of land between 6th-12th October 2017. If paddy cultivation was not possible, the Petitioner was asked to cultivate an appropriate crop upon the instructions of the agrarian officer. The Petitioner was informed that failure to follow the said directive would result in the paddy land being handed over to another party for cultivation, without prior notice to the Petitioner. This directive was issued pursuant to a policy decision of the then Government to cultivate uncultivated paddy fields in the country.

The Petitioner has filed this application to quash P32 by a writ of certiorari.

The Petitioner's position is that the land in question is not a paddy land within the definition given in section 101 of the Agrarian Development Act. I accept the submission of the Petitioner that if the land is not a paddy land, the decision contained in P32 is *ultra vires*.

The said section defines "paddy land" as follows:

"paddy land" means land which is cultivated with paddy or is prepared for the cultivation of paddy or which, having at any time previously been cultivated with paddy, is suitable for the cultivation of paddy, and includes such other land adjoining or appertaining to it as may be used by the cultivator for a threshing floor or for constructing his dwelling house, but does not include chena land or any land, which, with the permission of the Commissioner-General is used for any purpose other than cultivation in accordance with the provisions of this Act, or which is determined by the Commissioner-General not to be paddy land.

In short, "paddy land" means land which (a) is cultivated with paddy or (b) is prepared for the cultivation of paddy or (c) having at any time previously been cultivated with paddy, is suitable for the cultivation of paddy.

There is no dispute that this land is neither cultivated with paddy nor prepared for the cultivation of paddy. There cannot

be any dispute that this land had previously been cultivated with paddy (*vide inter alia* paragraph 7 of P44 tendered by the Petitioner). It is clear the land has not been cultivated with paddy for a long time, possibly about 30 years. Then the only outstanding question is whether the land is “*suitable for the cultivation of paddy*” at present.

By producing several documents, including P31, P33 and P37, the Petitioner submits that this land is not suitable for paddy cultivation due to the salinity in the soil and water of the area. The Petitioner also says the land is located near the Wilpattu National Park and, if cultivated, this area would be prone to incidents of the human elephant conflict, which is non-existent at present. He says this land can be used instead for an inland fishery.

However, none of these factors had been taken into consideration by the Commissioner when P32 was sent or at any time thereafter. As I said before, P32, which is a common letter sent to, supposedly, paddy land-owners, was issued upon a policy decision taken by the then Government to cultivate uncultivated paddy lands. It is not clear whether the said policy decision has been abandoned with the change of Government.

It appears that although the time period given in P32 to cultivate the land had long since lapsed by the time this application was filed, up to now no steps have been taken by the Commissioner to hand over the land to a third party for paddy or any other cultivation, although the Petitioner says steps are afoot to hand over the land to the 4th Respondent.

In the facts and circumstances of this case, it is not clear whether the disputed portion of land falls within the definition of “paddy land” in terms of the Agrarian Development Act for the Commissioner to have sent P32 to the Petitioner. I am unable to accept the argument of learned State Counsel, without qualification, that “*the said land is in fact an abandoned paddy field which falls within the definition of a ‘paddy land’ as defined by the Agrarian Development Act of 2000*”. The land being an abandoned paddy field is not in itself sufficient for it to come under the definition of paddy land. Land used for paddy cultivation many moons ago, but which has undergone significant changes with the passage of time, cannot continue to be considered paddy land forever. The land shall be suitable for cultivation of paddy at present. Salinity in soil/water and the potential threat of the human elephant conflict are relevant factors the Commissioner ought to have taken into account in deciding whether the land is suitable for cultivation of paddy at present.

Taking all these matters into consideration, I quash P32 by certiorari.

This does not prevent the Commissioner General of Agrarian Services from reconsidering the matter and making a fresh decision with reasons.

The application of the Petitioner is allowed. No costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal