

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

Court of Appeal case no. CA/PHC/42/2009

H.C. Anuradhapura case no. Writ 49/2008

Ranpati Dewage Adilin Premalatha,

Koralayagama, Dewahuwa

Petitioner

Vs.

1. Provincial Land Commissioner,
Provincial Land Commissioner's Office,
Anuradhapura.

2. Divisional Secretary,
Divisional Secretary's Office,
Palagalla.

3. Ranpati Dewage Sirisena,
Madura Niwasa, Dematagollagama,
Dewahuwa.

4. Ranpati Dewage Charlis,
No. 6/9, Narangaswewa,
Dewahuwa.

Respondents.

AND NOW

Ranpati Dewage Adilin Premalatha,

Koralayagama, Dewahuwa

Petitioner Appellant

Vs.

1. Provincial Land Commissioner,
Provincial Land Commissioner's Office,
Anuradhapura.
2. Divisional Secretary,
Divisional Secretary's Office,
Palagalla.
3. Ranpati Dewage Sirisena,
Madura Niwasa, Dematagollagama,
Dewahuwa.
4. Ranpati Dewage Charlis,
No. 6/9, Narangaswewa,
Dewahuwa.

Respondent Respondents

Before : H.C.J. Madawala J.
: L.T.B. Dehideniya J.

Counsel : Suranga Wimalasena SSC for the 1st and 2nd Respondent
Respondents
: Buddike Gamage for the 3rd Respondent Respondent
: Appellant is absent and unrepresented

Argued on : 27.01.2017

Written submissions filed on: 03.03.2017

Decided on : 02.05.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of the North Central Province holden at Anuradhapura.

The Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) instituted this application in the Provincial High Court of the North Central Province holden at Anuradhapura seeking for a mandate in the nature of a writ of *certiorari* to quash a grant said to have been issued in favour of the 3rd and 4th Respondent Respondents (hereinafter sometimes called and referred to as the Respondents) issued under the Land Development Ordinance and a writ of *mandamus* to compel the Respondents to issue the grant to the Appellant. The learned High Court Judge, after inquiry, dismissed the application. Being dissatisfied with the order, this appeal was presented to this Court.

Notice was issued to the Appellant on several occasions by this Court but was absent and unrepresented at the argument. The notice sent to the Appellant was not returned undelivered. Further the Appellant has obtained the appeal brief from this Court. But he did not take part in the argument. The Respondents raised a preliminary objection on the maintainability on the basis of the judgment of the Supreme Court in the case of *The Superintendent, Stafford Estate and others v. Solimuthu Rasu* S.C. Appeal No. 21/13 dated 26th September 2013.

It was held in that case that the “State Land” is a reserved subject under the 13th Amendment to the Constitution subject to the Provincial Council list which does not include the alienation of the state land. It has been held by Mohan Pieris PC CJ at page 16 of His Lordship’s judgment that;

The provision once again emphasizes the overarching position inherent in the 13th Amendment to the Constitution that State Land

will continue to vest in the Republic and may be disposed of by the President in accordance with Article 33 (d) and written laws governing the matter. The use of the definite article "the" before the word State Land in this provision conclusively proves that the state land referred to in this provision is confined to the land made available to the Provincial Council for utilization for a Provincial Council subject by virtue of 1.2. If after having made available to a Provincial Council a state land for use, the government decides to dispose of this land to a citizen or organization, the government can take back the land but an element of advice has been introduced to facilitate such alienation or disposition. In the same way the Provincial Council too can initiate advice for the purpose of persuading the government to alienate or dispose of the land made available for a worthy cause. It has to be noted that the absence of the word "only" before the word advice indicates the non-binding nature of the advice the Provincial Council proffers. Thus these inbuilt limitations on the part of the Provincial Council establish beyond scintilla of doubt that the Centre continues to have State Lands as its subject and it does not fall within the province of Provincial Councils.

The High Court of Province is empowered to issue prerogative writs under the Article 154P 4 (b) of the Constitution only on the following grounds. That is:

- (a) There must be a person within the province who must have exercised power under*
- (b) Any law or*
- (c) Any statute made by the Provincial Council*

(d) In respect of any matter set out in the Provincial Council List.

As I have pointed out, the “State Land” being a reserved subject, the Provincial High Court has no jurisdiction to entertain an application of this nature.

Accordingly, I dismiss the appeal.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal