

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

*In the matter of an application for mandates
in the nature of Writs of Mandamus,
Prohibition and Certiorari under and in
terms of Article 140 of the Constitution.*

CA/WRIT/63/2021

1. Dr. D. Wijewardena
No.38, Ratnayake Mawatha,
Pelawatte,
Battaramulla.
2. C. L. Wijewardena
No. 38, Ratnayake Mawatha,
Pelawatte,
Battaramulla.

Both appearing by their Attorney
W. S. P. Wijewardena
No.38, Ratnayake Mawatha,
Pelawatte,
Battaramulla.

3. S. R. Wijewardena
No.38, Ratnayake Mawatha,
Pelawatte,
Battaramulla.
4. W. S. P. Wijewardena
No. 38, Ratnayake Mawatha,
Pelawatte,
Battaramulla.

PETITIONERS

Vs.

1. E. M. A. J. Ekanayake
President
2. Leela Senanayake
Secretary
3. E. M. T. B. Ekanayake
Treasurer
All at:
Nilanthattuwa Farmers'
Organisation,
Nilanthattuwa, Ridigama,

- Kurunegala.
4. Nilanthattuwa Farmers' Organisation,
Nilanthattuwa, Ridigama,
Kurunegala.
 5. Shalika Rajapakse
Agrarian Research and
Development Officer,
Agrarian Service Center (558
Wewagedara Division)
Department of Agrarian
Development,
Rambadagalla,
Ridigama,
Kurunegala.
 6. S.M.G.S. Jayasekara
 - 6A. S.D.S. Samarasinghe
Divisional Officer (Acting)
Agrarian Service Center,
Department of Agrarian
Development,
Rambadagalla,
Ridigama,
Kurunegala.
 7. W. D.A. Pushpakumara
 - 7A. Palitha Senadheera
Assistant Commissioner
Department of Agrarian
Development,
District Office (Kurunegala)
Kandy Road,
Kurunegala.
 8. T. M. G. Tennakoon
Deputy Commissioner,
Department of Agrarian
Development,
District Office (Kurunegala),
Kandy Road,
Kurunegala.
 9. W. M. M. B. Weerasekara
 - 9A. A. H. M. L. Aberatne
Commissioner General
Department of Agrarian

Development,
Sir Marcus Fernando Mawatha,
Colombo 7.

RESPONDENTS

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Senany Dayaratne with Nishadi Wickramasinghe for the Petitioners.

Hemaka Senanayake for the 1st to 4th Respondents.

Navodhi de Zoysa, SC for the 5th to 9th Respondents.

Argued on: 08.11.2022, 20.09.2023

Written Submissions: Petitioners - 07.12.2023

1st to 4th Respondents -14.11.2023

Decided on: 10.01.2024

Sobhitha Rajakaruna J.

The grievance of the Petitioners is that the 1st and/or 4th Petitioners have not been conferred with membership in the 4th Respondent- Nilanthattuwa Farmers' Organisation ('Organisation'). It is stated that the 2nd and 3rd Petitioners are Children of the 1st and 4th Petitioners who own equal shares of the land relevant to the instant Application. The 1st Petitioner has appointed the 4th Petitioner- her husband as a Power of Attorney holder. The primary relief sought by the Petitioners is for a mandate in the nature of a writ of Mandamus compelling the 1st to 3rd Respondents and/or the Working Committee of the said Organisation to confer the Organisation's membership on the 1st and/or 4th Petitioners. No statements of objection have been filed on behalf of the 5th to 9th Respondents.

The 1st to 4th Respondents raising objections submit that the 1st to 3rd Respondents who are office bearers of the Organisation are not public authorities and as such no Writ lies upon those Respondents. Thus, I must first examine whether this Court could exercise its writ jurisdiction in favour of the Petitioners as prayed for in the prayer of the Petition.

The said Organisation has been established under the provisions of section 43 of the Agrarian Development Act No.46 of 2000 ('Act'). The power to register and cancel the registration of Farmers' Organisations established under the said section 43 is vested with the Commissioner-General of Agrarian Development. Every registered Farmers' Organisation shall be a body corporate having perpetual succession and a common seal

and may sue and be sued in its corporate name. The eligibility criteria for membership in such an Organisation are stipulated in section 43(4) of the Act. In terms of section 44 (1) the Commissioner-General (or a representative authorized generally or especially on that behalf) shall be entitled to examine the accounts of every Farmers' Organisation. It shall be the duty of a Farmers' Organisation to encourage small groups of farmers to organize themselves together having regard to the agricultural activities carried on by them or the relationships amongst them. Such provisions are contained in section 46 of the Act.

Amongst several other matters, the utilization of Agricultural lands in accordance with agricultural policies is one of the purposes enshrined in the preamble of the said Act. Upon the consideration of the provisions of Part V of the said Act including the provisions dealing with Farmers' Organisations and also the elements that are integrated and connected to the whole Act, it cannot be assumed that a Farmers' Organisation that is registered can be considered as a club or an association which is in completely private nature. It is abundantly clear that the purpose of incorporating such an Organisation is not to fulfill any private agenda but to enhance the effectiveness of the provisions of the said Act in promoting the agricultural policy of the country. Therefore, I take the view that this court should be able to exercise its writ jurisdiction in respect of the said Organisation, only to the extent necessary to ensure giving due effect to the relevant provisions of the said Act. However, in my above examination, I have only focused on the perspective concerning writs of mandamus which is the primary relief of the Petitioners.

At this stage, I need to draw my attention to the letter dated 06.02.2020 marked 'P17' by which the Assistant Commissioner of Agrarian Development has expressed her opinion that the 4th Petitioner has fulfilled the requirements to obtain membership in the Organisation. The said letter has also been copied to the Secretary of the said Organisation. The 4th Petitioner by way of his letter dated 10.02.2020 ('P18') has complained to the same Assistant Commissioner for not conferring him the membership. Referring to the said 'P18' the Agrarian Development Commissioner- Services has directed the Deputy Commissioner of Agrarian Development- Kurunegala to inquire into the matters complained of by the 4th Petitioner.

In this backdrop, I will now advert to the eligibility criteria for becoming a member of a Farmers' Organisation which is laid down in section 43 (4) of the Act. It reads;

“Every person whose livelihood is agriculture shall be eligible for membership in a Farmers' Organisation established under subsection (1), if-

(a) he is a citizen of Sri Lanka;

(b) he is not less than sixteen years of age; and

(c) he is a resident of the area of authority of the Farmers' Organisation in which he is seeking membership or he has been engaged in agricultural activities in that area of authority for a period exceeding two years”.

The same eligibility criteria are demonstrated even in the sample constitution (ගොවි සංවිධාන අතුරු ව්‍යවස්ථාව) of a Farmers' Organisation published by the Department of Agrarian Development. The said document (marked 'M') has been tendered to Court by way of motion dated 05.07.2021 filed on behalf of the Petitioners. Neither the provisions in the said document 'M' nor the said section 43(4) has laid down a requirement of getting the concurrence of the total membership of the Organisation when admitting members.

The aforesaid Assistant Commissioner of Agrarian Development by 'P17' has arrived at a conclusion based on the observations and the opinion of Agrarian Development Regional Officer- Rambadagalle that the 4th Petitioner is entitled to be a member of the said Organisation. The 1st to 4th Respondents assert that the said Assistant Commissioner has arrived at such a conclusion without a proper inquiry. I am aware that the Commissioner-General or Assistant Commissioner of Agrarian Development has no special powers to admit members to Farmers' Organisations but the relevant Assistant Commissioner based on the complaints received by the 4th Petitioner and after receiving observations from authorities has opined that the 4th Petitioner has fulfilled the eligibility criteria. Similarly, it is noted that 'P17' has not been challenged in any court of law. Thus, to my mind, the contents of the said 'P17' should be valid until a competent court quashes such decisions contained therein or invalidated by operation of law.

It is important to note that the Organisation has refused to grant membership to the 4th Petitioner not based on grounds emanating from the aforesaid eligibility criteria stipulated in the Act or the document 'M'. Given the minutes of the General Meeting held during the *Maha* season (05.03.2020) marked 'R2' the 4th Petitioner has been denied the

membership due to the purported reason of encroaching the upper portion of the Nilanthattuwa tank. There is no doubt that the Commissioner-General or any other relevant officer can inquire into any complaint of such encroachment and take necessary legal action according to law. On the other hand, according to the Constitution marked 'M' the Organisation is empowered to disenroll any member upon any ground mentioned in its Clause 14. It is observed that no evidence has been placed before this Court that the 4th Petitioner has been found guilty of any such complaint.

Moreover, the attention of the Court has been drawn to the case bearing No. CA/Writ/355/2021 in which the above-named Petitioners have challenged the decision of the Commissioner-General of Agrarian Development contained in the impugned letter (in the said case) dated 14.06.2021, marked P9. The Commissioner-General by such letter has decided to call for information in view of taking future steps to evict any unauthorized occupants (vide- order dated 22.03.2022 marked 'P24'- annexed to the Counter Affidavit). This Court has refused the said application because the Petitioners were unable to establish that their rights had been affected due to the said impugned letter. In any case, the said impugned letter reflects the fact that the Commissioner-General has not yet decided on the purported unauthorized occupation of the upper portion of the Nilanthattuwa tank, which is the basis for the Organisation's denial of the 4th Petitioner's membership. Thus, I observe that the refusal to grant such membership did not stem from any issue relating to the criteria that need to be met in order to be eligible for membership in the Organisation.

Apart from the claims that the 4th Petitioner is occupying the upper part of the said tank without authorization, the 1st and 4th Petitioners are accused of something else based on their respective vocations. The 1st to 4th Respondents contend that the 1st Petitioner is a Doctor of Medicine whilst the 4th Petitioner is a Chairman of a company and thus, neither of them meets the requirement of being a "farmer" which is allegedly a requisite for membership. In terms of section 43(4)(c) engaging in agricultural activities in the area of authority for a period exceeding two years is sufficient among other grounds for membership eligibility.

Especially during the Anuradhapura and Polonnaruwa eras, historical sources evince that the reigning Monarch participated or provided patronage in agricultural activities to ensure the prosperous island nation was self-sufficient. Hence, it is my view that irrespective of social status or vocation, any individual should be at liberty to engage in

agricultural activities and therefore, I find it hard to accept that having mud on one's body all the time is a requirement to be recognized as a "farmer". Accordingly, the words "a person whose livelihood is agriculture", embodied in section 43(4) of the Act should not be interpreted to deprive a person who earns remuneration as a result of a post or position he held at a different forum other than the paddy field. The Petitioners have tendered to this Court two certificates marked 'C' and 'D' (annexed to the motion dated 18.09.2023) awarded to the 4th Petitioner recognizing him as the 'most outstanding coconut grower' in the respective area.

At the same time, the Petitioners plead that the 4th Petitioner is also the tenant cultivator of the paddy field which forms part of the agricultural land relevant to the instant Application. It is further pleaded that the 4th Petitioner manages and administers the cultivation of his own rubber and coconut plantations and he is passionate about scientific agriculture and interested in investing in scientific methods for increasing the yield from agricultural plantations.

Similarly, it is observed that in terms of section 43 of the Act establishing ownership of agricultural land is not a precondition to becoming eligible for membership of the Organisation. Conversely, obtaining membership in a Farmers' Organisation should not be an added qualification to establish a title. I arrive at the above findings considering the scheme of the Act. Based on the circumstances of this case, this Court should not engage in an exercise to examine the title to the lands grown by the Petitioners or the relationship between the 4th Petitioner and the other Petitioners. What needs to be considered in the instant Application is whether the 4th Petitioner is entitled to be a Member of the Organisation simply because the Assistant Commissioner of Agrarian Development after an appropriate inquiry expressed a decision only in favour of the 4th Petitioner. Moreover, this Court does not have to assess the validity of the Powers of Attorney filed along with the instant Application since a valid proxy on behalf of the 4th Petitioner exists in the docket. The prayer of the Petition also categorically seeks relief only in favour of the 4th Petitioner and/or the 1st Petitioner.

Hence, I take the view that the reasons extended by the 1st to 4th Respondents denying the membership to the 4th Petitioner cannot be considered lawful and it violates the basic rights of the 4th Petitioner. Furthermore, not conferring the membership of the Organisation to the 4th Petitioner by the 1st to 4th Respondents should be considered as an act that prevents

giving due effect to the relevant provisions of the said Act. Therefore, I find that only the 4th Petitioner is entitled to a mandate in the nature of a writ of Mandamus, but I am not inclined to issue any other reliefs as prayed for in the Prayer of the Petition.

In these circumstances, I proceed to issue a mandate in the nature of a writ of Mandamus compelling the 1st to 4th Respondents to confer membership of the Organisation to the 4th Petitioner. However, the 4th Petitioner must submit a duly filled application signed by him to the Organisation. This judgement should not impede the Commissioner- General or the Organisation from taking any lawful action against the 4th Petitioner upon a valid charge of unauthorized encroachment according to law. At the same time, any interested party should have the right to challenge the decision reflected in 'P17' according to law.

Application is partly allowed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal