

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
Certiorari, Mandamus and Prohibition
under Article 140 of the Constitution of
Sri Lanka.

1. J2 Investment (Private) Limited
No.34/2, Dammadara Road,
Ratmalana.
2. Lakmin Wasantha Abeygunasekera
No.34, Dammadara Road,
Ratmalana.

*By and through his power of
Attorney holder;*

Rupika Dulshie Gunawardena
No.34, Dammadara Road,
Ratmalana.

PETITIONERS

CA (Writ) Case No: 768/24

Vs.

1. U. B. Rohana Rajapaksha
Commissioner General of Agrarian
Development,
Agrarian Development Department,
No.42, Sri Marcus Fernando Mawatha,
Colombo 07.

2. B. M. C. H. Kumarihami
Deputy Commissioner of Agrarian
Development,
Agrarian Development District Office,
Matale.
3. Mr. Pushpakumara
Deputy Commissioner of Agrarian
Development,
Agrarian Development District Office,
Matale.
4. M. M. Padma Jayanthi Herath
Agriculture Research and Production
Assistant,
Agrarian Development District Office,
Matale.
5. Agrarian Development Officer
Dambulla.
6. Officer-In-Charge
Sigiriya Police Station,
Sigiriya.
7. Wasala Duganna Ralalage Sameera
Sampath Bandara Wasala
No.213, Rajapihilla Mawatha,
Kandy.
8. Wasala Duganna Ralalage Kasun
Chaminda Bandara Wasala
No.213, Rajapihilla Mawatha,
Kandy.
9. W.D.R. Samarakoon Realty (Private)
Limited
No.233, Colombo Road,
Kandy.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Sanjeewa Jayawardena, PC with Rukshan Senadeera for the Petitioners.
Jagath Wickramanayake, PC with Nuwan Jayalath instructed by Tharushika Fernando for the 7th, 8th and 9th Respondent.
Sachitha Fernando, SC for the 1st – 5th Respondents.

Supported on : 15.07.2025

Written Submissions : Petitioners : 25.08.2025
tendered on 7th, 8th, 9th Respondents : 06.08.2025

Decided on : 26.09.2025

Dhammika Ganepola, J.

In the instant application the Petitioners seek *inter alia* a Writ of Certiorari quashing the decision of the 2nd Respondent dated 21st of November 2024 reflected in the document marked P10 which directs the Petitioners not to disturb the cultivation rights of the 7th Respondent and to remove any obstructions to the agricultural road that provide access to the paddy land in subject, a Writ of Prohibition restraining the 1st to 6th Respondents from executing the said decision and a Writ of Mandamus directing the 1st Respondent to hold a fresh inquiry in respect of the subject matter of this application in compliance with the applicable law.

When this matter was taken up for support for notice and grant of interim reliefs on the 15th February 2025, both parties made oral submissions,

and further, the Court permitted both parties to file written submissions. This order pertains to the issuance of notice and relevant interim relief. The Petitioners state that the 9th Respondent held ownership of the land in issue by virtue of Deeds Nos. 5504, 5505, and 5506, dated 1st February 2017, and the same had been mortgaged to the Hatton National Bank in order to obtain a loan facility. Consequent to the default of the loan, the Hatton National Bank had acquired the land in issue at a public auction. Thereafter, the Petitioners had purchased the land in issue from Hatton National Bank upon a Deed bearing No. 142 dated 10th July 2024 executed in favour of the Petitioners. The Petitioners state that after the land in issue was acquired, the Petitioners cultivated the land. However, the 7th and the 8th Respondents had attempted to enter the land claiming that they own a particular portion of the land. Thereafter, the 9th Respondent had made a complaint to the Agrarian Development Officer - Dambulla, stating that the Petitioners obstructed the agricultural roadway which leads to the Mahakapuyaya tank and the said portion of land. Accordingly, the 2nd Respondent had conducted an inquiry under Section 90 of the Agrarian Development Act (herein after sometimes refers to as "the Act") and had arrived at the conclusion that the Petitioners have interfered with the cultivation rights of the 9th Respondent and accordingly had directed the Petitioners to remove the obstructions to the agricultural roadway which gives access to the land that has been identified as a paddy land and to allow the 9th Respondent to cultivate the land (document marked P10).

It is the main submission of the learned President Counsel of the Petitioners that Section 90 of the Act does not empower the Commissioner General of Agrarian Services to entertain a complaint made by a person who is not an owner, cultivator, or occupier of an agricultural land. It is contended that the evidence adduced at the inquiry failed to prove the fact that the 9th Respondent is the owner or the occupier of the land. Hence, it is claimed that the decision P10 made by the 2nd Respondent is prejudicial to the right of the Petitioners who are the present cultivators or occupiers of the land in issue.

It is on the common ground that the 9th Respondent acquired the ownership of the lands depicted by:

- Lot B in the Plan No.4765 dated 3rd of November 2009(Y3) and Lot A1 of the Plan No.4764A dated 2nd of November 2009(Y5) by virtue of Deed No. 5404 dated 23 January 2017;
- Lot B of Plan No.4764 dated 2nd of November 2009(Y4) by virtue of Deed No. 5505 dated 23rd January 2017; and
- Lot A2 of Plan No. 4764A dated 3rd of November 2009 by virtue of Deed No. 5506 dated 23rd of January 2017.

However, the 9th Respondent had mortgaged only Lot B depicted in Plan No.4765 (Y3) and Lot A1 depicted in Plan No. 4764A (Y4), acquired by virtue of Deed No. 5504. Said property had been purchased by the Petitioners from the Hatton National Bank by virtue of Deed No.142(P4) pursuant to a default of the loan facilities obtained by the 9th Respondent.

However, the land depicted by Lot No. B in Plan No. 4764 (Y4) acquired by the 9th Respondent by virtue of No. 5505 dated 23rd January 2017, had been transferred to the 7th Respondent by virtue of Deed No.7410 dated 5th March 2024 (Y7) and on the very same date, it had been leased to the 9th Respondent by the 7th Respondent by the lease agreement marked P6. According to Plan No. 4764(Y4), the access road depicted by Lot 359 in Village Plan No. 510 leads to the above land depicted by Lot B in Plan No. 4764(Y4) and the same is referred to in Order P10. The contention of the 9th Respondent is that the above land, Lot B in the Plan No. 4764(Y4) had been used for agricultural purposes. In support of this position, the 9th Respondent submitted several receipts issued by the Department of Agrarian Development, marked as Y8 to Y13. Further, it is observed that a substantial amount of evidence, including the evidence of the 4th Respondent, Agriculture Research and Production Assistant, has been placed before the 2nd Respondent at inquiry to substantiate the position that the 9th Respondent is in occupation of the above land Lot B and that the road in dispute was used for agricultural purposes as an access road to the Mahakapuyaya Weva. Further, onetime ownership and leasehold document submitted by the 9th Respondent also support the status of the 9th Respondent as an “Owner Cultivator and/or Occupier.” Hence, it

appears that there is no reason to deny that the 9th Respondent had used the land depicted in Lot No. B of the Plan No.4764 (Y4) for agricultural purposes as the occupier of the land. Therefore, it is clear that the road depicted in Village Plan No. 510 as Lot 359, is also used for the purposes of agriculture, which falls within the purview of the statutory interpretation of “*agricultural road*” interpreted under Section 101 of the Act. Said interpretation is as follows.

"agricultural road" means a road used to transport agricultural crops or to transport the harvest or to drive or transport animals, or to transport agricultural equipment and machinery or for the purposes of supplying agricultural services or for any other agricultural activity and includes a road used for the purpose of gaining access to agricultural land and includes a road which prior to this date had been used for any of the purposes stated above;

Section 90(1) of the Act authorises the Commissioner General of Agrarian Services to consider complaints made by an owner, cultivator, or occupier of agricultural land regarding the right to use an agricultural road. Said Section is as follows.

90(1) *Where a complaint is made to the Commissioner General by any owner cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights, threshing rights, rights of using a threshing floor, the right of removing agricultural produce or the right to the use of an agricultural road of such owner cultivator or occupier, the Commissioner -General after inquiry may if he is satisfied that such interference or attempted interference will result in damage or loss of crop or livestock, issue an order on such person cultivator or occupier requiring him to comply*

with such directions as may be specified in such order necessary for the protection of such rights :

In view of the above facts and circumstances, the fact that the 9th Respondent was an occupier of the lands in dispute has been established. Thus, in terms of Section 90(1) of the Act, the 9th Respondent was empowered to make a complaint to the Commissioner-General thereunder. Therefore, the contention of the Petitioners that the 9th Respondent lacks standing to make a complaint in terms of Section 90(1), is untenable.

The Petitioners contend that the Order marked P10 is not a speaking order. It is my view that under Section 90(1) of the Act, the issuance of an order is dependent upon the Commissioner-General being satisfied that such interference or attempted interference will result in damage or loss of crop or livestock. The 2nd Respondent in her Order P10 specified that she had satisfied that the 2nd Petitioner had interfered with the cultivation rights of the 9th Respondent in view of the proceedings of the investigation, written submissions, and the inspection held. I am of the view that the Order P10 read with Section 90(1) of the Act speaks for itself that the interference or attempted interference by the Petitioners will result in damage or loss of crop or livestock in the impugned land. Accordingly, I view that the impugned Order P10 is in substantive compliance with Section 90 of the Act, and the P10 itself is a speaking order. Further, it is noted that the facts and materials placed before the 2nd Respondent do not suggest otherwise that the Commissioner-General could have arrived at a contrary decision to that of P10. Therefore, I am of the opinion that the Order P10 does not contravene the provisions under Section 90(1) of the Act or principles of natural justice.

The 7th, 8th and 9th Respondents claim that the Petitioners unlawfully obstructed the access road to the properties owned by the 9th Respondent, depicted as Lot 359 in the Village Plan bearing No. 510 and that the same is a property of the State. In support of the said position, the Respondents submitted the village Plan No. 510 marked Y2 and the

relevant Gazette Notification issued under Land Settlement Ordinance bearing No. 1887/38 dated 05.11.2014 marked Y16, which indicates that the above Lot 359 is owned by the State. Further, as per the Order marked P10 issued by the 2nd Respondent, the Petitioners were ordered to remove obstructions to the said land depicted by Lot 359 in village plan 510. Although the Petitioners have averred that the order to remove obstructions that impede access to the agricultural road is illegal, the Petitioners have failed to disclose the fact that the impugned access road is a State property. It is important to note that the Petitioners have not denied the fact that the said Lot 359 is owned by the State. Amidst such circumstances, the Petitioner cannot obstruct a State-owned access road. Hence, I am not inclined to accept the position that any prejudice would be caused to the Petitioners by relevant Respondents using the roadway.

It is observed that in her order P10, the 2nd Respondent states that since no objection has been raised with regard to the demarcation of boundaries of the property claimed by the Petitioners and since the Petitioners have not purchased the paddy lands, the cultivation rights over the land in concern, the 9th Respondent should not be disturbed until the boundaries are demarcated.

‘ඔබ විසින් මිල දී ගන්නා ලද දේපල නිසි පරිදි බෙදා වෙන් කළ ඉඩම් බැවින් සහ ඔබ විසින් කුඹුරු කොටස් මිලදී ගැනීමක් සිදු කර නොමැති බැවින්ද ඒවායේ මායිම් සලකුණු කිරීම සම්බන්ධව පැමිණිලි පාර්ශවයේ විරෝධයක් මතුවී නොමැති බැවින්ද නිසි ක්‍රමවේදයක් අනුව මායිම් කර ගන්නා තෙක් දැනට කුඹුර ලෙස හඳුනාගත හැකි බිම් කොටසේ වගා කටයුතු වල යෙදීමට පැමිණිලිකාර පාර්ශවයට බාධා නොකළ යුතුය.’

(Paragraph 03 of P10)

It is on the common ground that after purchasing the property from the Hatton National Bank, the Petitioners have not taken possession of such property through the District Court as specified in Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 04 of 1990. The stance of the Petitioners is that such a requirement did not arise as the Hatton National Bank handed over the possession of the property to the 1st Petitioner. Hence, it is my view that the best recourse available for the Petitioners is to have the matter adjudicated before an appropriate forum

rather than seeking relief by way of judicial review. In view of the foregoing, it is my view that the Petitioners have failed to satisfy this Court that facts and the circumstances of this case warrant the issuance of formal notice on the Respondents. Accordingly, I proceed to dismiss the application.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal