

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

In the matter of an application in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC FR NO. 253/2020

1. Galhenage Don Kenath Dushantha Abeynayake
No. 125/311A,
Sri Saranatissa Mawatha,
Kumbuka West,
Gonapola Junction.
(Husband of 2nd Petitioner)
2. Gamage Gayana Krishanthi Jayathilake
No. 125/311A,
Sri Saranatissa Mawatha,
Kumbuka West, Gonapola Junction.
(Wife of 1st Petitioner)
3. Eleperuma Achchige Devika Priyanthi
No. 45,
“Dhamkika Villa”,
Kumbuka-East,
Gonapola Junction.
4. Meegahage Hemachandra Perera
“Sagarika”,
Kumbuka-East,
Gonapola Junction.
5. Hettiarachchige Don Saumayasiri
Kumbuka-East,
Gonapola Junction.

PETITIONERS

Vs

1. CI Nalin Sanjeewa
Chief Inspector of Police
The Officer-in-Charge,
Police Station,
Moragahahena.
2. CI Anil Ranaweera
Chief Inspector of Police
The Deputy Officer-in-Charge,
Police Station,
Moragahahena.
3. SI Dissanayake
Sub Inspector of Police,
Police Station,
Moragahahena.
4. PC Pathmalal Rupasinghe - 95642
Police Constable
Police Station,
Moragahahena.
5. PC Jayasinghe – 40494
Police Constable
Sri Lanka Police College,
Kaluthara.
6. PC Lakmal
Police Constable and Driver
Police Station,
Moragahahena.
7. ASP Ashoka Mahinda Weerakkodi

Assistant Superintendent of Police,
Office of Assistant Superintendent of Police,
Horana.

8. SSP Sanjaya Irasinghe
Senior Superintendent of Police,
Office of the Superintendent of Police,
Panadura.
9. DIG Vijitha Gunasekara
Deputy Inspector General of Police
Office of Deputy Inspector General of Police,
Kaluthara.
10. SDIG Deshabandu Tennakoon
Senior Deputy Inspector General of Police,
Western Province,
Office of Senior Deputy Inspector General of
Police, Police Headquarters,
Colombo 01.
11. AIGP S.A. Wickramarathne
The Acting Inspector General of Police
Police Headquarters,
Colombo 01.
12. Vishwa Niranga Kuruvita
No.26/B,
Pengiriwatta Mawatha,
Mirihana.

(The virtual complainant of the Case No. 53924/2020 of Magistrate's Court Horana at whose instigation 1st to 5th Respondents have acted in collusion with each other to violate the

Fundamental Rights guaranteed to the Petitioners by Constitution)

13. M. Aruni R. P. Abeygunawardane
Assistant Commissioner of Agrarian Services
(Kaluthara District),
Agrarian Development District Office,
4th Floor,
District Secretariat,
Kaluthara.
14. Hon. Attorney General
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

<u>BEFORE</u>	:	P. PADMAN SURASENA, J. A. L. SHIRAN GOONERATNE, J. ACHALA WENGAPPULI, J.
<u>COUNSEL</u>	:	Moditha T. B. Ekanayake for the Petitioners. Yuresha de Silva DSG for all the Respondents except the 12 th Respondent.
<u>ARGUED &</u>		
<u>DECIDED ON</u>	:	02-05-2024.

P. PADMAN SURASENA, J.

Court heard the submissions of the learned Counsel for the Petitioners and also the submissions of the learned Deputy Solicitor General who appeared for all the Respondents other than the 12th Respondent and concluded the argument. The Petitioners in this case are owners/ cultivators/ occupiers of pieces of lands situated around the roadway depicted in the sketch produced by the Petitioners marked **P10**. In the said sketch, the situation of their lands in relation to the land of the 12th Respondent are clearly depicted.

The primary complaint made by the Petitioners in their Petition is against the alleged involvement of the 1st-7th Respondents in constructing a fence across this roadway blocking their free movement and the use of that roadway (Vide, paragraph 5(J) of the Petition dated 10-08-2020). The alleged unlawfully constructed fence is also shown in the said sketch marked **P10**. It was the complaint of the Petitioners that the said alleged arbitrary construction of the fence had prevented them from accessing their paddy fields which are also shown on the extreme northern side in the said sketch **P10**.

It is on this basis that the Petitioners have alleged that the said Respondents have infringed their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

Petitioners in their Petition have also complained that the said Respondents had proceeded to arrest the 1st Petitioner on 24-04-2020 without any lawful justification.

Upon this Petition being supported for Leave to Proceed, this Court by its order dated 04-09-2020, having considered the submissions made by both parties, had decided to grant Leave to Proceed in respect of the alleged infringement of Fundamental Rights of the Petitioners guaranteed under Articles 12(1) and 13(1) of the Constitution.

The Respondents, in particular, the 1st Respondent, the Officer-in-Charge of Police Station Moragahahena, has tendered to this Court, his affidavit annexing the relevant Notes of Investigation pertaining to the incident complained of, by the Petitioners. Perusal of the Investigation Notes produced marked **1 R1, 1 R2, 1 R3, 1 R4, 1 R5, 1 R6, 1 R7, 1 R8, 1 R9 & 1 R10** clearly shows that there has been a dispute continuing for some time, between the 12th Respondent and the Petitioners in relation to the roadway shown in the sketch produced by the Petitioners marked **P10**.

Learned Counsel for the Petitioners in the course of his submissions admitted that it was the Petitioners who initially engaged in clearing this road which is shown on the sketch **P10**.

We observe that this had been the root cause for the eruption of the dispute between the Petitioners and the 12th Respondent which then had prolonged. That is a common ground between the parties.

It is opportune at this stage, to straightaway refer to the letter dated 28-03-2022 produced marked **13 R8** annexed to the affidavit filed by the 13th Respondent who is the Assistant Commissioner of Agrarian Services, Kalutara District. This letter (**13 R8**) which has been addressed to both the Petitioners and the 12th Respondent, contains the decision, the said Assistant Commissioner of Agrarian Services had arrived at, after the inquiry relating to the dispute between those parties over the relevant roadway. Learned Counsel for the Petitioners admits that the roadway referred to in the decision contained in **13 R8** is the roadway shown on the sketch produced by the Petitioners marked (**P10**). What is important in this decision is the fact that the 13th Respondent (the Assistant Commissioner of Agrarian Services) has decided that the roadway relevant to this dispute which is also the roadway shown on sketch **P10** should remain only as a four feet wide roadway. Learned Counsel for the Petitioners in the course of his submissions conceded that the Petitioners are bound by the said decision of the Assistant Commissioner of Agrarian Services (**13 R8**) as they have not canvassed it thereafter in any other higher fora.

Admittedly, the Petitioners have cleared this roadway from its then existed four feet width to make it a wider roadway. The Petitioners have admitted that they had engaged the services of a backhoe to achieve this purpose. Going by the paragraph 2 of the decision of the Assistant Commissioner of Agrarian Services (**13 R8**), we observe that the Petitioners had succeeded in widening this roadway four feet to a twelve feet width.

Petitioners in their Petition have specifically stated that they are not claiming anything against the 13th Respondent (the Assistant Commissioner of Agrarian Services) who decided that the roadway shown on sketch **P10** should remain only as four feet wide roadway (paragraph 4 (m) of the Petition). As has already been mentioned above, the Petitioners have not challenged the decision contained in **13 R8** thereafter. Therefore, we have to go on the basis that the impugned roadway can be used by its users, only as a four feet wide roadway. That is the established entitlement for the Petitioners as well. On their own admission, the Petitioners had widened this roadway and converted it to a twelve feet wide roadway. There is no justification before us for the said action of unlawful widening of this roadway by the Petitioners. Even if the Petitioners claim an entitlement to such a wide road, it is not a matter which this Court can adjudicate in this case which is a Fundamental Rights violation Petition by the executive or administrative action. In such a claim, the Petitioners need to advice themselves regarding any such possibility. We can see that it is also not the wish of the Petitioners in the instant case. That is because the Petitioners have filed this Petition only with

a view to vindicate the alleged infringement of their Fundamental Rights guaranteed under Articles 12(1) & 13(1) of the Constitution.

We observe that although the arrest of the 1st Petitioner had been done on 17-02-2021, the 1st complaint in relation to the clearing of this roadway has been made as far back as 09-04-2020. This is manifest from the document produced marked **1 R1**. This complaint has been made to Moragahahena Police Station by the 12th Respondent. We observe that from that date onwards, the officers of Moragahahena Police Station were compelled to get themselves involved from time to time in settling the ongoing disputes that had taken place on several days between the period of the 1st complaint i.e. 09-04-2020 and the date of arrest i.e., 17-02-2021. We also observe that prior to the arrest of the 1st Petitioner which was made on 17-02-2021, the Officer-in-Charge of Moragahahena Police Station had filed a report produced marked **1 R9** which is dated 16-10-2020 reporting these incidents to the Magistrate's Court.

In the Report (**1 R9**), the Officer-in-Charge of Moragahahena Police Station (1st Respondent) has reported to Court that the 1st Petitioner had committed offences punishable under Sections 314, 316, 433 and 486 of the Penal Code. The 1st Respondent in the same report had requested further time to arrest the 1st Petitioner and produce before Court. It is much after the said report was filed in Court that the 1st Respondent had proceeded to arrest the 1st Petitioner. We observe that this arrest also has been made upon the 1st Petitioner appearing before the Police Station on notice. Moreover, we observe that the 1st Petitioner has been released on the same day upon his entering into a surety bond at the Police Station itself. This is clear from the document produced, marked **1 R10**. Although, the Petitioners may have denied these notes, we observe that the Petitioners have not countered the fact the 1st Petitioner was arrested on 17-02-2021 and released on the same day after entering into a bond at the Police Station itself. In these circumstances, we are unable to hold that the 1st - 7th Respondents are responsible for any sort of infringement of any Fundamental Rights of the Petitioners guaranteed under Article 13(1) of the Constitution.

As has been adverted to above, upon a complaint made by the 12th Respondent in relation to any unlawful acts being committed pertaining to this roadway, we are unable to hold that the 1st - 7th Respondents should never have got involved in settling this dispute as it has been brought to the notice of Police.

Indeed, from the 1st complaint on 09-04-2020 up to the arrest of the 1st Petitioner on 17-02-2021, we cannot see any arbitrary action on the part of the Police Officers of Moragahahena Police Station as they had only engaged in their duties lawfully in order to maintain peace in the area and preserve law and order situation in the area. Therefore, we are also unable to hold with the Petitioners that the 1st -7th Respondents have infringed the Fundamental Rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

For the above reasons, we hold that the Petitioners are not entitled to succeed with this Petition. We decide to refuse this Petition. This Petition must stand dismissed without costs.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree,

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree,

JUDGE OF THE SUPREME COURT

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