

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

S.C (FR) 224/2012

In the matter of an Application under
and in terms of the Article 126 read with
the Article 17 of the Constitution.

1. M. G. Nishantha Rupasinghe
No. 59, Vihara Mawatha,
New Puttalam Road,
Pothanegama.

PETITIONER

Vs.

1. Dharmakeerthi Wijesundera
No. 280A, New Town, Anuradhapura.
2. Viraj Perera
Commissioner of Local Government
Office of the Commissioner of Local
Government Office,
Provincial Council Building of the North
Central Province,
Anuradhapura.
3. Dumindu Dayasena Retiyala
(Member of the Municipal Council of
Anuradhapura)
"Hotel Thammenna", Airport Road,
Anuradhapura.
4. Headquarter Inspector of Anuradhapura
Headquarter Inspector's Office,
Anuradhapura.

5. W.M.R. Wijesinghe
Assistant Divisional Secretary
Divisional Secretariat Office (Negenahira
Nuwaragampalatha), Anuradhapura.
6. Divisional Secretary
Divisional Secretariat's Office
(Negenahira Nuwaragampalatha),
Anuradhapura.
7. Dayananda,
Grama Niladari,
No. 258, Thulana, Anuradhapura.
8. Dissanayake (Sub Inspector of Police),
Police Station, Anuradhapura.
9. Rupasinghe (Police Sergeant – 24707),
Police Station, Anuradhapura.
10. Nalaka (Police Constable – 9241)
Police Station, Anuradhapura.
11. Jagath (Police Constable – 46768),
Police Station, Anuradhapura.
12. Sirimal (Police Constable – 62953)
Police Station, Anuradhapura
13. Keerthi (Police Constable – 22255)
Police Station, Anuradhapura.
14. Inspector General of Police,
Police Headquarters, Colombo 1.
15. Provincial Commissioner of Lands,
North Central Province,
Kachcheri Building, Anuradhapura.
16. The Hon. Attorney General
Department of the Attorney General.
Colombo 12.

RESPONDENS

BEFORE: Upaly Abeyrathne J.
Anil Gooneratne J. &
Prasanna S. Jayawardena P.C., J

COUNSEL: Saliya Peiris with Thanuka Nandasiri for the Petitioner

Upali Jayamanne for the 1st and 3rd Respondents

Dr. Avanti Perera S.S.C. for the 5th, 6th 15th & 16th Respondents

2nd, 7th – 13th Respondents are absent and unrepresented

ARGUED ON: 06.02.2017

DECIDED ON: 23.02.2017

GOONERATNE J.

The Petitioner is a retired Police Officer who has filed this application complaining that some of the Respondents forcefully entered his land and attempted to clear the land and cause certain destruction and even demolished Petitioners fowl pens. He refers to three incidents, for which the Respondents are responsible for causing damage to his property. In the manner described in the petition of the Petitioner I note the following.

- (a) On 19.06.2011, the 2nd and 3rd Respondents with several others tried to forcefully enter the Petitioner's land claiming that the land had been leased to the 1st Respondent. Petitioner warned the gathering of people who entered the premises, of making a police complaint against them. Thereafter they left the property.
- (b) On 24.06.2011 the 1st Respondent along with two others entered the property and started to clear the land. Petitioner objected to this and threatened to complain to the police. Thereafter the 1st Respondent and the other two persons left the property.
- (c) On 23.01.2012 1st to 3rd and 7th Respondents to 13th Respondent and three other civilians forcefully entered the Petitioner's property and demolished the Petitioner's fowl pens. On the next date on 24th January, Petitioner lodged a complaint with the police (P8). I also note the other documents produced along with P8, Photograph of the fowl pen after illegal acts P8A-P81. Two video CDs containing illegal arbitrary acts of 1st to 13th and 7th to 13th Respondents.

There is also reference to District Court, Anuradhapura Case No.

24613/L whereas Petitioner sought a declaration of rights to possession. This action was filed as the Petitioner had reliable information that 1st and 3rd Respondents were attempting to forcefully enter Petitioner's land with a view of starting a Tourist Hotel. Petitioner pleads he has also sought an interim injunction to prevent acts of 1st to 3rd Respondents. Petitioner states that whilst the inquiry into the interim injunction was pending 1st to 3rd with 7th to 13th

Respondents acted illegally as described in (c) above. According to him acts of demolition was done to make nugatory the Petitioners District Court action. However the Petitioner states the District court granted an interim injunction against the 1st to 3rd Respondents.

There is another incident described in the petition. That is on 23.12.2005 the 1st Respondent had come to his residence and abused his wife and again tried to forcefully enter the premises. Thereafter his wife filed action in the District Court for declaration of right of possession (case No. 21034/L) Petition is so prepared to project land disputes between the 1st Respondent his wife and other relatives, which has a history. There is reference to several other cases i.e possessory action, land disputes, declaration on land permits etc.

This court on or about 11.07.2012 granted leave to proceed for the alleged violation of Article 12(1) of the Constitution against the 2nd, 3rd and 7th to 13th Respondents. On the date of hearing learned Senior State Counsel informed court that no objection would be filed on behalf of the 5th, 6th, 15th and 16th Respondents. 2nd, 7th – 13th Respondents were absent and unrepresented though duly noticed. Court was also informed that the 2nd Respondent had expired. Learned Counsel who appeared for the 1st and 3rd Respondents denied any liability and submitted to court that the material placed before court does

not indicate any involvement of his clients, and or even to connect them with the alleged incidents relied upon by the Petitioner.

With regard to the Petitioner's claim that, on 23rd January 2012, the 1st to 3rd and 7th to 13th Respondents forcibly entered his land and demolished his fowl pens, counsel for the 3rd Respondent stated that, the 3rd Respondent did enter the Petitioner's land on that day but denied that any wrongful or unlawful act was committed. There is no reliable material before Court to substantiate the Petitioner's claim that any of the other Respondents entered the Petitioner's land. There is no evidence to suggest that the 3rd Respondent committed any act which is wrongful or unlawful since a viewing of the Video CD only shows a few men clearing a land which is overgrown with some plants. There is no sign of any fowl pens on the land. There are a few seconds of a video recording of a man breaking a section of a low wall which is about a foot high but he is doing that without any objection by any person. There is no evidence of any force or violence being used or of any threatening language being used. Instead, there is an amicable conversation between some men, one of whom appears to be the Petitioner from the contents of the dialogue, discussing the fact that, there are Court cases pending in the District Court over who has the rights to the land and that this dispute will have to be referred to the District Court to be resolved. Further, there is no evidence that the 3rd Respondent was acting under the

colours of his office as a member of the Municipal Council of Anuradhapura. In fact, this land is outside the Municipal Limits of Anuradhapura. All this establishes that whatever occurred on 23rd January 2012 was a private dispute between the Petitioner and the persons who entered his land on that day and that the Petitioner's remedy, if any, is a civil action for damages. In fact, counsel for the Petitioner admitted that such an action has been filed in the District Court.

This court having considered the material placed before court cannot arrive at a definite finding of a violation of a fundamental right. The three incidents discussed above and the other incident alleged to have taken place on 23.12.2005 does not take the petitioner's case any further to justify a violation of a fundamental right. I am unable to find material to corroborate any one or more of such incidents. If at all incident at (c) above though suggest unlawful entry to Petitioner's land, the available material do not directly implicate any one or more of the Respondents. Police statement P8 refer to some names, but I am unable to really pin point as to who would be held responsible amongst the Respondents. Even the video CDs would not identify the Respondents. On this I have to pose the questions who? When? And where? Above all the question of identity is in grave issue. Even if this court takes a liberal view of the provisions of Article 126, I am unable to declare a violation and a liability in the public law

of the State, unproved and unestablished incidents cannot form the basis of a Fundamental Rights Application. Whatever allegation or incident should be proved to the satisfaction of court.

For the reasons set out above, I am of the view that no fundamental rights of the Petitioner has been violated. The Petitioner's Application is therefore refused and dismissed. There will be no costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT

Prasanna S. Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT