

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

In the matter of an application for Special Leave to Appeal against the judgement of the Court of Appeal dated 13.12.2019 in case no. CA WRIT 406/2016 in terms of Article 127/128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application 406/16

**Petitioner**

vs.

1. D. M. Nalinasekara  
No. 4/4, Galle road,  
Dehiwela South,  
Dehiwela.
2. J. A. P. Jagath Kumara,  
No. 226, Galdora road,  
Boralugama, Kosgama.
3. Anusha Dewapriya  
Assistant Commissioner,  
Agrarian Development,  
Kegalle.

## **Respondents**

**AND NOW BETWEEN**

W. A. R. Don Dharmawardena of No. 84,  
Yatiyanthota road,  
Avissawella.

**Petitioner-Appellant**

1. D. M. Nalinasekara  
No. 4/4, Galle road,  
Dehiwela South,  
Dehiwela.
2. J. A. P. Jagath Kumara,  
No. 226, Galdora road,  
Boralugama, Kosgama.
3. Anusha Dewapriya  
Assistant Commissioner,  
Agrarian Development,  
Kegalle.
- 3a. S. D. K. Mediwaka,  
Assistant Commissioner,  
Agrarian Development,  
Kegalle.

**Respondent-Respondents**

Before : A. H. M. D. Nawaz, J.  
Menaka Wijesundera, J.  
Sampath K. B. Wijeratne, J.

Counsel : Dr. Sunil Coorey with Neminda Kariyawasam instructed  
by Diane Stephnie Rodrigo for the Appellant  
Wardani Karunaratne with Chathurya Dunuvila and S. K.

Wickramathilake instructed by Alanka Dias for the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent.

Sabrina Ahmed, S.S.C. instructed by Rizni Firduose for 3a Respondent-respondent.

Written

Submissions : Written submissions on behalf of the petitioner-appellant on 15<sup>th</sup> June, 2022.  
Written submissions on behalf of the 1<sup>st</sup> Respondent on 21<sup>st</sup> November, 2022  
Further written submissions on behalf of the 1<sup>st</sup> Respondent on 02<sup>nd</sup> August, 2023.  
Written submissions on behalf of the 3a Respondent on 15<sup>th</sup> June, 2022

Argued on : 29.04.2025

Decided on : 16.07.2025

**MENAKA WIJESUNDERA J.**

The instant appeal has been lodged to set aside the judgment dated 13.12.2019 of the Court of Appeal.

When the instant matter was supported before this Court, it has been decided that leave should be granted on the following questions of law:

1. Did the learned Court of Appeal Judge err in failing to appreciate that '1R1' is clearly an afterthought which was constructed after filing this application of Writ:
2. Did the learned Court of Appeal Judge err in failing to appreciate that the 3<sup>rd</sup> Respondent had utterly failed to consider the evidence at the previous

inquiry to find out whether a right of 15 feet wide road way had been obstructed by the Petitioner;

3. Did the learned Court of Appeal err in holding that the Commissioner need not favour any party; whereas the decision marked as 'W7' is clearly tainted with biasness;
4. Did the learned Court of Appeal Judge err in holding that the Petitioner had agreed to uproot his 'rubber plantation'; whereas it was only agreed by the Petitioner to uproot the rubber plant line only if the adjoining paddy land is harvested in future as per documents marked as 'RR3' and 'RR4';
5. Did the learned Court of Appeal Judge err in accepting document marked as 'RR1', when such document marked as 'RR1' is an untrue baseless allegation made against the Petitioner by the 1<sup>st</sup> Respondent;
6. Did the learned Court of Appeal Judge err in failing to appreciate that there was not an iota of evidence to suggest that a roadway of 12 to 14 feet existed for more than 100 years and accordingly the Petitioner stated that such statement is a misstatement of fact.
7. Did the learned Court of Appeal Judge err in failing to appreciate that the Court of Appeal by its previous order dated 23.02.2012 ordered to re-consider evidence already led to find out whether a right of 15 feet wide road way had been obstructed by the Petitioner; which had not been considered by the 3<sup>rd</sup> Respondent.
8. Did the learned Court of Appeal Judge err in failing to appreciate the photographs annexed to the Counter Objections marked as 'W9a', to 'W9e' where the disputed roadway is NOT A MOTARABLE ROAD WAY which is a FOOT path leads up to the entrance of the Petitioner's land.
9. Did the learned Court of Appeal Judge err in holding that, as the Petitioner failed to mention of case No. 27589 District Court Avissawella, it is material suppression of fact and warrants to be dismissed; where

this writ application is filed against the Order of the 3<sup>rd</sup> Respondent made under the Agrarian Development Act.

10. Did the Court of Appeal and the Commissioner of Agrarian Development fail to consider whether an order under Section 90(1) of the Agrarian Development Act can be made unless the commissioner is satisfied that interference with the agricultural right of way will result in damage or loss of crops or livestock. If so, did the Court of Appeal err in failing to quash certiorari the order under Section 90(1) made by the commissioner of Agrarian Development.

The petitioner pleads that he is the lawful owner of the land named 'Madolaovita', which is depicted in plan no. 1225 dated 02.07.1961, which he claims that since purchasing the said land in 1986, the entire property had been fenced off and that there was no pathway on the land identified as a roadway or a foot path.

The entire land consists of lots 1 and 2 on the abovementioned plan and the three lands situated on the southern boundary of the land belongs to the 1<sup>st</sup> and the 2<sup>nd</sup> respondents.

He has further stated that in 2006, for the purpose of the development of his land, he from his own money cleared a roadway by cutting across his land from east to west and that he built a small house on lot 2. However, the owners on the southern boundary had requested to use this pathway as a footpath and he states that he agreed as a matter of courtesy. Eventually he had to replace the barbed wire on the western boundary for the betterment of his rubber cultivation and he had done so in the year 2008.

The respondents, who had their land on the southern boundary, had complained against him for obstructing the roadway which he says was built by him from his own money, saying that they were unable to access their agricultural land to the Commissioner of the Agrarian development department and the complaints had been inquired into and had held after inquiry, on 12.08.2009, that the petitioner had obstructed the road under section 90(1) of the Agrarian Development Act no. 46 of 2000.

At the inquiry, the respondents had claimed that they used the roadway since 1951, including the use of vehicles and tractors, though the road is not shown on the plan no. 1825. The 2<sup>nd</sup> respondent had corroborated the 1<sup>st</sup> respondent.

The position of the petitioner had been that the witnesses led at the inquiry had said that only a footpath had existed, not a roadway and that the paddy land in question had not been cultivated since 2007.

The Court of Appeal in the impugned order had said that since the main matter is before the District Court, which the petitioner failed to mention, the decision of the Agrarian services commissioner should stand until the original court decides on the substantive issue.

Being aggrieved by the said order the instant appeal has been filed.

However, in the order marked as 'R1', the Commissioner has analyzed the evidence led at the inquiry by the complainants and had revealed that the roadway in question had been used by the complainants to carry out their agricultural activities as per section 90(1) of the relevant act.

The Commission has further considered the evidence of the relevant Gramasevaka, who had corroborated the complainants and had said that the petitioner had blocked the alleged roadway and had carried out illegal gemming on the said land.

The photographic evidence marked as 'W9a' and 'W9e' is indicative of a pathway and not a footpath and the 1<sup>st</sup> and 2<sup>nd</sup> respondents further corroborate the material in 'R1'.

The Court of Appeal when making the impugned order on 13.12.2019 had taken all these material into consideration and the non-disclosure by the petitioner before the Court of Appeal regarding the pendency of the District Court case.

Hence, the dismissal by the Court of Appeal is not only on the ground of not divulging all the facts to Court, but upon the consideration of 'R1' and other relevant documents such as 'RR1' to 'RR4'.

Thereafter, the Court of Appeal has very correctly decided that the orders made by the Commissioner against the petitioner are only provisional orders which have no bearing on the substantive rights of the parties and have directed the matter to be decided by the respective District Court and until such time the Commissioners order on 07.11.2016 is to prevail as per section 90(1) of the Agrarian Development Act.

Hence, I am of the view that there is no merit in the submissions made on behalf of the appellant to disturb the findings of the Court of Appeal.

As such, I answer the questions of law raised and stated above in the negative and dismiss the instant application while affirming the order dated 13.12.2019 of the Court of Appeal.

I make no order for costs.

**JUDGE OF THE SUPREME COURT**

**A. H. M. D. Nawaz, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sampath K. B. Wijeratne, J.**

I agree.

**JUDGE OF THE SUPREME COURT**