

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

In the matter of an application for the grant of Writs of Certiorari and Prohibition under terms of Article 140 of the constitution.

1. Talawakelle Plantations Ltd.
No: 25, Foster Lane,
Colombo 10.
2. H.P.W. Vithanage,
Superintendent,
Moragalle Estate,
Imaduwa.

Petitioners

Vs.

1. Land Reform Commission, No: C 82,
Gregory's Avenue,
Colombo 7.
2. Rohana de Alwis,
Director, District
Land Reform Board,
Galle.
- 2A Bandara Mangalika
Thisera, District Land
Reform Board Galle.

3. Sri Lanka State Plantations Corporation, No: 55/75, Vauxhall Street, Colombo 2.
4. Secretary, Ministry of Plantations Industries, No 55/75, Vauxhall Street, Colombo 2.
5. K.W. Manjula, Viharakanda Paragoda, Imaduma.

Respondents

2A. B.M. Tisera, Director
District Land Reform
Board, Galle.

Added Respondent

C.A. 608/09

Writ Application

Before : Rohini Marasinghe, J.

Counsel : J.C. Weliamuna for the Petitioner.

S.S. Sahabandu with I.R. Rajapakse for
the 1st Respondent.

A. Gnanathanan ASG. P.C. with
Nayomi Kahawita SC. for the 3rd and 4th
Respondents.

Argued &
Decided on : 23.05.2012

Rohini Marasinghe,J.

The 1st petitioner is a company by the name of Talawakele Plantations Ltd. The 2nd Petitioner is the Superintendent of the 1st petitioner company. The 1st respondent is the Land Reform Commission (LRC). The 3rd respondent is the Sri-Lanka State Plantations Corporation. (SLSPC) The 5th respondent is the person in whose favour the impugned documents have been issued.

The petitioner by his application alleged the following;

The ownership of the land in question belonged to the LRC. Pursuant to the gazette marked as P2 the ownership

of the land called ' Moragalle Estate without any residue was transferred by the LRC to SLSPC. Consequent to this vesting, the LRC ceased to have any title to the said land depicted in schedule to P2. The SLSPC entered into a lease a agreement with the petitioner company. Pursuant to the lease indenture the SLSPC leased the said estate to the petitioner company. The present dispute arose as a result of the LRC taking steps to lease a portion of the said estate to the 5th respondent. The petitioners in this application have sought a writ in the nature of certiorari to quash the decisions contained the documents marked as P10, P6(a) and P6 (b).

The respondents meaning the LRC filed affidavit objecting to the application of the petitioners. The LRC claimed ownership to the land in issue. The extent of the land in issue seems to be about 3/4th acre of land. The basis of the claim to the impugned portion of land was for the reasons mentioned in 1 R2. According to the contents in 1R2, as I understand is as follows:

At one time the Moragalla estate was comprised of 531 acres and 32 perches, which was owned by the LRC. Subsequently, the administration of the said extent was transferred to the SLSPC. On 27-2-1982, an extent of 473 acres and 33 perches was vested in SLSPC. (P2) As the respondents have admitted the vesting I am not required to decide on the legality of such vesting as reflected in P2.(vide 1R2)

At the time of the vesting, there was an extent of 7 acres that belonged to Moragala estate which had not been included as a portion that had been vested on SLSPC. Consequently, the LRC continued to be the owners of that portion of land.

And it is the contention of the respondents that the impugned portion of land is situated within those 7 acres of land belonging to the LRC.

The petitioner in his counter objections had referred to the document marked as 1R2. In the paragraph 15 of the counter objections the petitioner, reiterated the fact that the Moragalla estate was comprised of land which were not contiguous to Moragalla estate. But the petitioner had not adequately challenged the position taken by the respondent with regard to the 7 acres which was referred to in 1R2. The most important fact in this case was whether the respondent was correct in what was stated in 1R2. The petitioner had not challenged the finding contained in 1R2. That fact may be described as the disputed fact in this case. And on that fact, the respondent's investigation and determination had not been challenged. The findings of the respondent would have been reviewable if the petitioner had established that the decision contained in 1R2 was wrong because the respondents had misunderstood the material facts in this case or had made a material error on an "established" fact or that the decision was perverse. And "established" would mean those facts that were available for the decision but the respondents have apparently overlooked, misunderstood or made a material

mistake or acted perversely in deciding that fact. The most generous interpretation of 'established' was **given by Cooke J. in Daganayasi v. Minister of Irrigation [1980] 2 NLR 130.** In that case the court was prepared to treat the information known by a doctor to carry out an examination of a child as being established facts. In applying this principle to this case the 'established' facts would mean to include the entire extent of the Moragalla estate, the extent that was vested on the SLSPC, the extent which remained in the ownership of the LRC according to the knowledge of the LRC. On these facts the LRC had reached a conclusion which is reflected in 1 R2. As the petitioner had not challenged the decision contained in 1R2 with regard to the 7 acres of land retained by the LRC, there is no way this court could have interfered with that finding. The procedure exists (Appellate procedure rules) for any party to challenge any fact by adducing fresh evidence by way of affidavit or by submitting additional documents to this court in the manner provided in the Rules.

The petitioner had failed to establish that the impugned documents are challengeable as in mentioned paragraph 18 of the petition.

A succinct summary of the principle underlying the limited approach to review of administrative fact- finding is provided in the following observation of Lord Brightman in **Pulhofer v. Hillingdon London Borough Council;**

“Where the existence or non-existence of a fact is left to the judgment and discretion of a public body it is the duty of the court to leave the decision of that fact to the public body to whom the Parliament has entrusted the decision making power save in a case where it is obvious that the public body, consciously or unconsciously are acting Perversely”.([1986] A.C. 484,518)

Another noteworthy judgment relating to the powers of the courts in reviewing the decisions of the administrative bodies has been exhaustively dealt in the case of Reg. **Home**

Secretary, ex.p Khawaja (H.L.) [1984] p74,98) while overruling the decision contained in Reg. V. secretary of state for the Home department, Rx parte Zamir [1980] A.C. 930.

Therefore , for the foregoing reasons I dismiss the application of the petitioners.

Rohini Marasinghe,J.

Judge of the Court of Appeal

Jmr/-