

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

In the matter of an application for a
mandate in the nature of writ of Prohibition
and Mandamus under and in terms of
Article 140 of the Constitution.

Deepthi Kumara Uyanwatta,
Deepthi Motors,
Anuradhapura.

Petitioner

C.A. Writ Application No: 706/2008

Vs

1. Divisional Secretary,
Nuwaragampalatha - Central,
Pandulagama,
Anuradhapura.
And five (05) Others

Respondents

BEFORE : S. SRISKANDARAJAH, J (P/CA).

COUNSEL : Faiz Musthapa PC
for the Petitioner,
Vikum de Abrew, SSC,
for the 1st -4th & 6th Respondents,
5th Respondent absent and unrepresented.

Argued on : 01.02.2011

Decided on : 16.01.2012

S.Sriskandarajah J.

The Petitioner is in occupation of the land depicted in Lot F in the survey plan bearing No F.V.P.1403 prepared by the Survey General's Department. The Petitioner admitted in his petition that the said land was given to one U.G.Amaraseeli in 1994 on a permit issued under the land Development Ordinance. The said U.G. Amaraseeli had transferred the possession of the said land to the Petitioner. The Permit of U.G. Amaraseeli was cancelled for violating the condition of the permit. She filed a writ application to quash the said decision to cancel her permit in the High Court of the North Central Province in Application bearing No 01/1998. The High Court quashed the said decision and directed to hold a fresh inquiry. After a fresh inquiry the permit of the said U.G. Amaraseeli was cancelled.

The Petitioner submitted that he made an application to grant a permit to him but it was disregarded. The predecessor in office of the 1st Respondent issued a quit notice dated 8th September 2000 to the Petitioner informing the Petitioner to vacate the said premises on or before the 1st November 2000. The predecessor in office of the 1st Respondent instituted an action in the Magistrate's Court of Anuradhapura bearing No.76270 seeking an order to eject the Petitioner. On 25th of June 2003 the Learned Magistrate of Anuradhapura made order to eject the Petitioner from the corpus. The Petitioner filed a revision application to revise the said order in the Provincial High Court of Anuradhapura and it was dismissed. The Petitioner has filed an appeal to the Court of Appeal against the said order.

The Petitioner in this application is seeking an order of prohibition prohibiting the Respondents from demolishing the house built by the Petitioner on the said land. The Petitioner himself had admitted that he has no right whatsoever in the said land. A competent court has already made an order under the state land recovery of possession Act to eject the Petitioner.

The revision application filed against the said order by the Petitioner was dismissed by the relevant Provincial High Court in these circumstances any steps taken to eject the Petitioner and to take possession of the land cannot be considered as an act without any lawful authority or contrary to law.

In R v Electricity Commissioners ex p. London Electricity Joint Committee Co (1920) Ltd. [1924] 1K.B 171 at 206 Atkin LJ said;

“I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction.”

In R v Grater London Council ex p .Blackburn [1976] 1 WLR 550 Lord Denning MR said of prohibition;

“It is available to prohibit administrative authorities from exceeding their powers or misusing them. In particular, it can prohibit a licensing authority from making rules or granting licences which permit conduct which is contrary to Law.”

For the reason stated above I dismiss the Petitioners application for a writ of prohibition.

Petitioner has also sought a writ of mandamus directing the 1st Respondent to take steps according to law to grant the Petitioner a permit. The Petitioner on his own admission is in possession of a land given on permit to another person. In these circumstances the Petitioner cannot have a legitimate expectation that the land will be given to him on permit. On the other hand the Petitioner has no statutory right or the Respondent has no public duty to

give a permit to the Petitioner in respect of this land. In these circumstances the Petitioner is not entitle to a writ of Mandamus.

I dismiss this application without costs.

President of the Court of Appeal