

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

In the matter of an Application for an order in the
nature of a writ of Certiorari, in terms of Article
140 of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Neville Anthony Keil,
50, Jambugasmulla Mawatha,
Nugegoda.

Petitioner

C.A. Writ Application No: 878/2007

Vs

1. Maharagama Urban Council,
Maharagama.
2. Kanthi Kodikara,
Chairman,
Maharagama Urban Council,
Maharagama

Respondents.

<u>BEFORE</u>	:	S. SRISKANDARAJAH, J (P/CA)
<u>COUNSEL</u>	:	Ronald Perera with Nalin Amarageewa. for the Petitioner, S.M.S.Jayawardena for the 1 st & 2 nd Respondents,
<u>Written submissions</u>	:	29.04.2010 (Respondents) 07.07. 2010 (Petitioner)
<u>Decided on</u>	:	16.01.2012

S.Sriskandarajah.J.

The Petitioner submitted that the access to his property from Jambugasmulla Mawatha is through a by-lane. The Petitioner has the right of way in common together with another house owner J. Gamini Fernando. The Petitioner further submitted that the Petitioner became aware in June 2007 that the 1st Respondent Urban Council under the hand of the 2nd Respondent Chairman had issued a Gazette Notification in terms of Section 50 and 52 of the Urban Councils Ordinance in the Gazette No.1,461 dated 01st September 2006 declaring the said by-lane to be vested with the 1st Respondent.

The Petitioner in this application is seeking a writ of certiorari to quash the said Gazette Notification vesting the by-lane commencing from Assessment No 48 and leading to 48/1 and 52/1 Jambugasmulla Mawatha. The basis of the challenge of the vesting is that a proper technical report on the vesting has not been obtained before vesting the said by-lane.

The Petitioner also contended that the said decision to vest the by-lane has not complied with the imperative requirements set out in the Section 52 of the Urban Councils Ordinance. The Petitioner's position is that under Section 52 the owner of the land should make a free gift of the land to the council and it has to be in writing signed by the owner in the presence of the Chairman.

The Petitioner submitted that he had not gifted the right of way over the said by-lane to the Respondent- Council.

Section 52 of the Urban Council Ordinance provides:

52. If in connexion with the turning, diversion, widening, opening, enlargement or improvement of any thoroughfare, it becomes necessary for any Urban Council to take possession of the land of any person for public use, and if the person claiming to be the owner of the land desires to make a free gift of the land to the Council for such purpose and to renounce all claim to compensation therefore, a record in writing to that effect duly signed by such person in the presence of the Chairman or of a person

authorized by the Chairman in writing in that behalf shall be sufficient to vest the land in the Council. No such record shall be deemed to be invalid or of no effect in law by reason only that the requirements of section 2 of the Prevention of Frauds Ordinance have not been complied with as to attestation by a notary public and by witnesses.

According to this section if it is necessary for the Urban Council to take possession of the land from any person for the purpose stated therein it could vest the said land in the Council, if the person claiming to be the owner of the land desires to make a free gift of the land to the Council for such purpose in writing.

The Respondents relied on the document marked R2 which is a letter signed by Gamini Fernando owner of house No.50/1 gifting the said by-lane on which he claims that he has exclusive soil rights. The Respondent claims according to the second schedule of the deed No1596 dated 14th September 1996 attested by S.R.Kularatne Notary Public Colombo Gamini Fernando has soil rights over the strip of land reservation for road in extent A0:R0:P0630 but the Petitioner has only a right of way.

As far as the Respondents are concerned if a person claiming to be the owner of the land makes a free gift of the land to the Council for such purpose stipulated in Section 52 of the said Ordinance in writing is sufficient to publish a vesting. But in fairness the Petitioner when objections are raised by the Respondent held an inquiry and after giving a hearing to the Petitioner justified the said vesting.

In these circumstances there is no illegality or irrationality in the vesting. If the Petitioner challenges the free gift of the said by-lane by the said Gamini Fernando on the basis that he has no soil rights on the said strip of land it cannot be decided by this court as it involves disputed question of facts.

When facts are in dispute, parties are not entitled to invoke writ jurisdiction:
Ekanayake and others Vs People's Bank (2005) 1 Sri L R page 94.

For the above reasons this court dismisses this application without costs.

President of the Court of Appeal