

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

1. W. M. Karunawathie of
Panguwegedera, Pitadeniya,
Medagama.
2. W. M. Seneviratne Bandara of
No. 2/92, Paragahakele.
3. W. M. Sumanasinghe Bandara of
No. 2.92, Paragahakele.

PETITIONERS

C.A 452-2008 (Writ)

Vs.

1. Arachchi Hamilage Pemawathie
2. M. Lakshman Jayaweera

Both of No. 23, Ruhunugama,
Kadjuwatte, Weheragala.

3. T. G. Dayananda,
Weheragala Divisional Manager,
4. S. M. Amith Sisira Kumara,
Unit Manager
5. Wanigasekera
Land Officer
6. A. Subasinghe
Land Officer

All of Weheragala Divisional Office,
Mahaweli Authority of Sri Lanka
Weheragala.

7. Mahaweli Authority of Sri Lanka of
Darley Road, Colombo 10.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Dr. Sunil Coorey with Sudarshini Coorey for Petitioners

Rohan Sahabandu with Hasitha Amarasinghe
for the 1st & 2nd Respondents

Vikum de Abrew S. S. C., for 3rd – 7th Respondents

ARGUED ON; 30.10.2012

DECIDED ON: 06.03.2013

GOONERATNE J.

By this writ application the three Petitioners have sought a Writ of Certiorari to quash the permit issued to one W. M. Siriwardena Banda under the Land Development Ordinance. A Writ of Mandamus is also sought to issue a permit to the 1st Petitioner. Sub paragraph (d) of the prayer to the Petition seeks a Writ of Mandamus to direct the 3rd to 7th Respondents to issue a permit to the 2nd Petitioner. This court observes that the relief prayed for by the application of the Petitioners are itself vague and lacks the basic requirements under the appellate

procedure rules which should be adhered to by the Petitioners. The vagueness of the application is manifested by including the words 'in the event' in the prayer at the beginning of paragraphs 'b' 'c' & 'd'. This court and may be the other Respondents are invited to surmise the existence of a valid permit. I would at the outset rule that it would not suffice in law and the applicable procedure to rely on the permit produced by the 3rd to 7th Respondents marked '3R1' along with their objections. On this ground alone this application has to be rejected.

To refer to the facts very briefly as in the affidavit and written submission filed by the Petitioner in this court, are as follows. The 3 Petitioners claim to be the brother and sisters of permit holder W. M. Siriwardena Bandara who was an employee of the 7th Respondent Authority and died on or about 2007 ('G'). Petitioner claim that Siriwardena Bandara was un married and died issueless, but was living with the 1st Respondent. The Death Certificates of the parents of the said Siriwardena Bandara is marked 'E' & 'F'. By the letters marked 'J' & 'K' the 1st Petitioner wrote to the 3rd Respondent that the permit be issued to the 1st Petitioner. There was no response to the said letters (dated January & February 2008) Petitioners also allege that the nominee the 2nd Respondent (as in 3R1) is the son of one M.B. Kiribanda and the 1st Respondent to this application. The Marriage Certificate of the 1st Respondent and Kiribanda is produced marked 'H'. I would incorporate the submissions of both sides and materials contained in the petition/affidavit and counter affidavit of the Petitioner since the facts referred to therein give rise to very complex facts.

Argument against the Petitioner

- (i) That in document marked as "A" the Birth Certificate of Siriwardena Bandara, at item 6 "Were parents marked?" the answer is "Yes"; but in the Birth Certificates of the 1st to 3rd Petitioners which are marked as B, C, D at item 6 "Were parents marked?" the answer is "No". Therefore the 1st to 3rd Petitioners are illegitimate children and cannot qualify under the Land Development Ordinance to obtain a permit to the disputed land.
- (ii) In the said Birth Certificates marked as A, B,C, and D, the mother's name in A, C and in D appears as "Ratnayake Mudiyansele Wimalawathie" and in the Birth Certificate marked as B, the mother's name appears as "Ratnayake Mudiyansele Heen Menika". Therefore there is a discrepancy as to who is the lawful wife of Wannisinghe Mudiyansele Punchi Bandara.
- (iii) The document sought to be quashed by the Petitioner by way of writ is not annexed to the petition, therefore whether a writ will lie.

In the counter affidavit of Petitioner it is stated:

As per the Counter Affidavit filed by the Petitioners the parents of the Petitioners and Siriwardena Bandara was never married (paragraph 3 of the Counter Affidavit dated 17/01/2009). Therefore it is respectfully submitted that the item 6 of the Birth Certificate marked as "A" to the petition, it is not correct. In any event if at the time Siriwardena Bandara was born in 1954, if the parents were married, they would also be married in the later years, in which years the Petitioners were born. However the Petitioners admit the fact that the parents of the Petitioners were unmarried at all times, but their parents lived as husband and wife.

The facts presented by the Petitioners and the other Respondents are made to look in a way complex and on the other hand disputed facts. The 3rd - 7th Respondents in no uncertain terms aver that by permit marked 3R1 the person called W. M. Siriwardena Bandara became the permit holder and has been in

possession of the land along with the 1st Respondent since 1979. This is the position of the official Respondents. The said Siriwardena Bandara died on or about December 2007. (G) Application filed on May 2008. Delay of about 5 months, noted. The Petitioners claim to be the brothers and sisters of the said Siriwardena Bandara, who was never married but lived with the 1st Respondent. On the other hand 1st & 2nd Respondents deny that the Petitioners were the brothers and sisters of W. M. Siriwardena Bandara. 1st Respondent claim to be the wife of W M. Siriwardena Bandara either by habit and repute etc. Some doubt had been also raised regarding legitimacy of the Petitioners and that of Siriwardena Bandara who is the legitimate son of his parents. Accordingly Birth Certificates 'A' 'B' 'C' & 'D' are produced. These appear to be disputed facts. The 7th Respondent also need to verify all relevant and necessary facts and issue the permit to the person entitled to same by law. This court cannot go on a voyage of discovery to ascertain whether the 7th Respondent had complied with the provisions of the Land Development Ordinance.

When facts are disputed, court should be cautious and refrain from interfering by way of granting a prerogative writ. This is a discretionary remedy of court. Given the powers of such a remedy, the Common law surrounding this remedy requires multiple conditions that must be met prior to issuance of a writ by court. Only if (a) the major facts are not on dispute and the legal result are not subject to controversy *Thajudeen Vs. Sri Lanka Tea Board and Another* (1981) 2 SLR 471 and (b) the function that is to be completed by writ is a public duty with the power to perform, such duty. Vide *Hakmana Multipurpose Corporative Society Ltd. Vs. Ferdinando* (1985) 2 SLR 272 *Silva Vs. Ambawatta* (1968) 71 NLR

348 will Writ of Mandamus lie. A Writ of Mandamus cannot lie as a matter of course or routine. 1 CLW 306.

In all the above facts and circumstances of this case this is not a fit case to issue the writs prayed for in the application of the three Petitioners. The 7th Respondent Authority on the other hand should have held an inquiry to decide whether there had been a proper legally acceptable nomination in terms of the Land Development Ordinance. In any event the Petitioners have not established proper acceptable grounds to satisfy court, their entitlement for a prerogative writ. Nor can a writ be granted on vague statements.

Application dismissed without costs.

JUDGE OF THE COURT OF APPEAL