

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

P. C. P. Kumaratunga
Near Wild Life Office
Rubberwatte Road,
Monaragala.

PETITIONER

C. A. 365/2009 (Writ)

Vs.

1. The Divisional Secretary
Divisional Secretary's Office,
Monaragala.
2. Land Reform Commission
No. C 82, Gregory's Avenue,
Colombo 7.
3. Nimal Punchihewa,
Chairman
Land Reform Commission
No. C 82, Gregory's Avenue,
Colombo 7.
4. National Housing Development
Authority
Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: W. Dayaratne P.C with R. Jayawardena for the Petitioner

Janak de Silva D.S.G., for 1st & 4th Respondents.

C. Paranagama for 2nd & 3rd Respondents

ARGUED ON: 07.11.2012 & 14.11.2012

DECIDED ON: 29.04.2013

GOONERANTE J.

The Petitioner to this application seeks a Writ of Certiorari and Mandamus to quash letter marked P8 which cancel a previous decision contained in letter P5 to transfer the corpus to the Petitioner, and to compel the 1st to 3rd Respondents to issue a deed of disposition/transfer in favour of the Petitioner. According to the material gathered from the amended affidavit of the Petitioner filed in this court, petitioner allege that the Petitioner came into occupation of the corpus in 1983 with her mother P. S. Muthukumarana with the leave and licence of the then Director of the 2nd Respondent Commission. It is pleaded that the Petitioner has since effected certain improvements by construction of a house and having a plantation within the corpus in the manner described in the Petitioner's affidavit. The Petitioner relies on document P5.

The above document P5 dated 28.11.2001 has been signed by the Chairman of the Land Reform Commission and described as document transferred some land to the Petitioner and refer to Section 22(1)(c) of the Land Reform Law. It reads as නිවාස කටයුතු වෙනුවෙන් යොදාගනු සඳහා ඉඩම් කොටසක් විකිණීමෙන් පවරාදීම. The said section of the said law enacts that any agricultural land vested in the commission may be used for alienation by way of sale in individual allotments to persons for construction of residential houses. Petitioner pleads that she has been in continuous occupation from 1983 and has deposited a sum of Rs. 25,000/- on 24.9.2003 (P6) as part payment of the required consideration of the 2nd Respondent.

It is the case of the Petitioner that to her surprise and dismay on or about 22.10.2003 the 1st Respondent filed an application under the provisions of the State Lands Recovery of Possession Act in the Magistrate's Court of Monaragala to recover possession of the corpus on the basis of unauthorized possession of State land. In the mean time by letter P8 of 20.2.2004, the Chairman of the 2nd Respondent Commission cancelled the decision stated in letter P5 to transfer as aforesaid a plot of land to the Petitioner. Petitioner pleads that the learned Magistrate by order of 26.4.2004 dismissed the application of the 1st Respondent (P9). Thereafter the 1st Respondent being dissatisfied with the above order of the learned Magistrate filed a revision application in the Provincial High Court of Uva Province to set aside the Magistrate's order but that revision application was also dismissed by the learned High Court Judge on 2.8.2005. (P11). Petitioner also aver that from the order of dismissal the 1st Respondent filed a revision

application to this court, on 2.8.2005 bearing No CA (PHC) Application 284/2005 seeking to set aside the Magistrate's Court order and the High Court Order (P12 & P12a).

The reason to file the present application for a Writ of Certiorari and Mandamus is more fully referred to in the affidavit of the Petitioner in paragraph 18 of same. It reads thus:

When the above case came up for argument on 02.03.2009 their Lordships found that whatever the outcome of the said case it would not be beneficial to me as there is no legally valid document in my favour to occupy the said premises and I have to exercise my remedy before another forum. Therefore I filed this application which is the only court to exercise my rights.

The delay of 5 years in filing this application according to the Petitioner is due to a series of cases filed by the 1st Respondent. This court will consider such position at a subsequent point in this judgment. The delay if any is an inordinate delay which should be properly and correctly explained in detail, to enable this court to consider such position, and excuse delay.

This court also takes note of the Journal Entry of 1.3.2010, and order had been made on that day to add the National Housing Development Authority as the 4th Respondent for the reasons stated therein.

At the hearing of this application learned President's Counsel for Petitioner inter alia submitted the several matters as pleaded and emphasized that his client has a legitimate expectation to get the relief sought and that the

Petitioner has a right to pursue the Writ Application based on the document P5, notwithstanding it was cancelled illegally by document P8.

This court need to consider the position of the 2nd and 4th Respondents who have filed their pleadings and same brings to light very important matters, some of which seems to be not disclosed to this court by the Petitioner. Both the 2nd Respondent and 4th Respondent plead that the Petitioner has suppressed material facts. The 2nd Respondent the Chairman of the Land Reform Commission has pleaded inter alia that:

- (a) Surveyor who prepared plan P1 was not in the panel of Surveyors in the Land Reform Commission.
- (b) Genuineness of document P5 in dispute. Does not have the seal of Chairman.
- (c) Over 3040 acres of land belonging to Kumarawatte Group in Monaragala District vested in the LRC, and 200 acres from that extent given to Government Agent, Monaragala for development activities.
- (d) By 2R1, 8 acres of the above 200 acres (adjoining new CTB depot) were acquired for the National Housing Authority to construct quarters for Government officers.
- (e) National Housing Authority has constructed the official quarters in the said portion of land.
- (f) Petitioner was living in an official quarters with her former husband one K.M.D. Kulatunge who was a Director in the Integrated Rural Development Project in the Monaragala District. Having being separated and divorced from her former husband Petitioner unlawfully occupied the said quarters.
- (g) Divisional Secretary, Monaragala filed action against the Petitioner in the Magistrate's Court and the Petitioner was ejected in the year 2003 from the official quarters. Vide 2R2.

- (h) Petitioner had constructed an unlawful structure behind the official quarters. Portion of land claimed by the Petitioner is included in the 8 acres assigned to the National Housing Development Authority in 1978.

The following material could be gathered from the affidavit of the 4th

Respondent

- (1) By 4R1 on 25.3.1983 official quarters belonging to 4th Respondent handed over to Government Agent, Monaragala.
- (2) By 4R2 on 9.6.1997 Petitioner's husband who was a Government Servant was requested to hand over possession of the official quarters to Divisional Secretary, Monaragala. By 4R3 16.7.1997 petitioner was requested to hand over possession.
- (3) Petitioner made representation by 4R4 & 4R5 (letters of 2.2.1998 & 2.3.1998) to obtain the premises in question.
- (4) Above request of Petitioner turned down by letter of 13.5.1998 (4R6).
- (5) Petitioner failure to vacate resulted in litigation and officials took steps under State Land Recovery of Possession Act – 4R7 the proceedings in the Magistrate's Court (case No. 81316/02) indicate Magistrate issue order under Section 7 of the Act. On 30.7.2003 fiscal handed over vacant possession to officers of the 4th Respondent – Fiscal report shows that another house had been constructed on the same land which was the subject matter of the Magistrate's Court application. There had been no order in relation to that and possession not taken over. By 4R8 (2.8.2003) the District Manager of the 4th Respondent had requested Divisional Secretary to take possession of the said house and land as well. Document 4R9 & 4R10 relate to the steps taken on above. As such Magistrate's Court case 90949/3 referred to in the petition of the Petitioner was filed thereafter. (It is the same subject matter as in case No. 81316/02).

I would for the purpose of clarity incorporate the following paragraphs of the affidavit of the 4th Respondent as it would be necessary to fully understand the correct factual position since the Petitioner has failed to advert to same in the petition filed of record. The following to be noted:

- (a) By letter dated 12.11.2003 the Staff Assistant, Land Reform Commission Bala Mandalaya, Monaragala informed the Director/Land Vesting, Central, Uva and Northern Zones of the 2nd Respondent that the small house constructed by the Petitioner was on the land reserved for the 4th Respondent and that the Petitioner had made a deposit to the 2nd Respondent for the said land reserved for the 4th Respondent.

(A certified copy of letter dated 12.11.2003 is annexed hereto marked 4R11 and is pleaded as part and parcel hereof)

- (b) By letter dated 17.12.2003 the Divisional Secretary, Monaragala requested the District Manager, Monaragala of the 4th Respondent to submit documents to establish title to the land in question;

(A certified copy of letter dated 17.12.2003 is annexed hereto marked 4R12 and is pleaded as part and parcel hereof)

- (c) By letter dated 23.12.2003 the District Manager, Monaragala of the 4th Respondent sent the relevant documentation and plans to the Divisional Secretary, Monaragala;

(Certified copies of letter dated 23.12.2003 sent by District Manager, Monaragala of the 4th Respondent to Divisional Secretary, Monaragala, letter dated 6.11.1996 sent by the Divisional Secretary, Monaragala; to District Manager, Monaragala of the 4th Respondent, Form S. D (18) and Survey General F.V.P No. 172 Supplement 95 Plan are annexed hereto marked 4R13, 4R14, 4R15 and 4R16 respectively and are pleaded as part and parcel hereof).

- (d) By letter dated 16.2.2004 the Senior Manager (Lands) of the 4th Respondent requested the Director/Land Vesting, Central, Uva and Northern Zones of the 2nd Respondent to issue a letter indicating that the said land was not reserved for the Petitioner;

(A certified copy of letter dated 16.2.2004 is annexed hereto marked 4R17 and is pleaded as part and parcel hereof)

- (e) By letter dated 20.2.2004 the chairman of the 2nd Respondent confirmed that the Petitioner has no right to the land in question;

(A certified copy of letter dated 20.2.2004 is annexed hereto marked 4R18 and is pleaded as part and parcel hereof)

- (f) Though the Petitioner was evicted from the official quarters belonging to the 4th Respondent she has continuously harassed and prevented officers of the 4th Respondent from enjoying peaceful possession of the said official quarters and land. She has also in complete violation of the order of eviction made and executed in Magistrate's Court of Monaragala Case No. 81316/02 entered the official quarters on several occasions. Several complaints had been made to the Police of these obstructions and violation of the Court order;

(Certified copies of letters dated 22.1.2004 and 25.1.2004 sent to the Officers-in-Charge of the Police Station, Monaragala and complaint made by R.A. Ranasinghe, Senior Clerk of the 4th Respondent dated 29.6.2004 and the investigation notes pertaining to the said complaint are annexed hereto marked 4R19, 4R20, 4R21 & 4R22 respectively and are plead as part and parcel hereof).

I have considered all the material both oral and documentary placed before this court by either party. It is evident that this court need to focus on two vital points. i.e delay and willful misrepresentation or suppression of material facts by the Petitioner. Both above would disentitled the Petitioner for the remedy by way of prerogative writs.

On the question of delay the Petitioner merely refer to the several steps taken by the Respondents to evict the Petitioner at various stages in litigation. What is important to question is the decision contained in document P8 dated 20.2.2004 which cancel letter P5 of 28.11.2001. Petitioner cannot rely on the acts and action of other Respondents to excuse delay. Petitioner should have sought the writ jurisdiction of court within a very brief period of time from the date reflected in P8 (20.02.2004). The delay is over 5 years which cannot be excused nor can this court lend any support to the matters pleaded in paragraph 17 of the Petitioner amended petition to nullify laches.

The traditional approach has been that “unexplained delay” in seeking an order in the nature of writ is by itself fatal to the application. “Delay defeats equity” per Wanasundara J. in Ramasamy Vs. Ceylon State Mortgage Bank (1976) 78 NLR 510,514. Undue delay defeats Writ Applications (1949) 51 NLR 167,168. No proper explanation for delay. 73 NLR 262. Another case of delay where application was refused was in a school admission case, Sarath Hulangama Case 1986 (1) SLR 275, 278.

The other important aspect is on suppression of material Facts. Petitioner seeks to demonstrate her initial occupancy on the basis of leave and licence from the authorities concerned. There is no clue as to how she really entered the premises in dispute. The material that surface from the affidavits of the Respondents disclose that the Petitioner’s husband was a Government servant who had been given the premises may be on the basis of employment. I would advert to the matters stated in sub paragraph (c) to (f) and (1) to (5) and the subsequent matters stated above in this judgment. None of which were disclosed by the Petitioner. There is no clue of the above matters referred to in the petition of the Petitioner. Instead the Petitioners, learned President’s Counsel attempts to formulate arguments on behalf of the Petitioner as pleaded from the Magistrate’s Court case to the revision application made to the High Court and to this court, without making specific reference to both Magistrate’s Court cases namely case Nos. 81316/02 and 90949/3. Until the entire background story and picture had been presented to this court by the Respondents, it was not possible to ascertain all the relevant facts and circumstances from the material placed by the Petitioner. The Petitioner cannot plead ignorance of facts and this court could

very well conclude that she was aware of all the matters disclosed by the Respondents from the time she entered the premises in dispute with her husband Kulatunge. I would go to the extent to observe that there is in fact an element of deception and willful suppression or misrepresentation of relevant facts.

A petitioner seeking an order in the nature of a prerogative writ whom the Court finds has willfully suppressed or misrepresented a material fact, will, irrespective of the merits, be refused the writ for that reason alone. A party applying for a prerogative writ is under a duty to the Court to disclose all material facts within his knowledge, and this duty of disclosure is similar to the duty on a party applying for an injunction. "The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked" (Pathirana J. in Alphonso Appuhamy Case 77 NLR 131, 135) has been pointed out in applications for prerogative writs as well as in applications for injunctions. "In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court will not go into the merits of the application, but will dismiss it without further examination" (Marsoof; followed 77 NLR 131) once the Court finds that the petitioner has been guilty of willful suppression or misrepresentation of a material fact. As the application is made ex parte in the first instance, the petitioner "must be frank with the court, and must not suppress material facts or practice anything like deception". (Sansoni J. 56 NLR 293, 304) The principle is that "when a party is seeking discretionary relief ... upon an application for a writ of certiorari, he enters into a

contractual obligation with the Court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to (the) Court ... (When) the petitioner ... has been remiss in its duty ... and obligation to Court ... the Court is entitled to raise the matter in limine and to dismiss the application without investigating into the merits of the application." Blanca Diamonds (Pvt) Ltd. Vs. Wilfred Van Els (1997) 1 SLR 360, 362-3.

In all the above facts and circumstances of this application this court is not inclined to grant any relief to the Petitioner. As such this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL