

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

C.A 596/2009 (Writ)

H. A. K. Karunaratne
No. 460/20, Bullers Road,
Colombo 7.

PETITIONER

Vs.

1. Colombo Municipal Council
Town Hall,
Colombo 7.
2. O. Kamil,
Competent Authority
Colombo Municipal Council
Town Hall, Colombo 7.
3. Municipal Commissioner
Colombo Municipal Council
Town Hall,
Colombo 7.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
H. N. J. Perera J

COUNSEL: Manohara de Silva P.C., with Hirosha Munasinghe
and Ayesha Wijayalath for Petitioner

C. Nilanduwa for Respondents

ARGUED ON: 12.02.2012

DECIDED ON: 04.06.2013

GOONERATNE J.

The Petitioner in this application has sought a Writ of Mandamus to compel the Respondents to execute the lease agreement as envisaged by the decision of the Colombo Municipal Council dated 22.9.1989 marked P4. It is the case of the Petitioner as submitted to this court by the learned President's Counsel that the corpus in dispute had as far back as 1945, vested in the 1st Respondent Council by certificate marked P1. The Petitioner occupies a portion of land, so vested, by certificate P1, and by licence P2 dated 6.4.1978 permitted the Petitioner to occupy premises No. 460/20 Bauddhaloka Mawatha, Colombo 7. Petitioner also contends that as a licensee he had constructed a permanent structure.

On or about 1980 as submitted by learned President's Counsel the Road Development Authority commenced road widening on Bullers Road and the above plot of land occupied by the Petitioner was adjacent to Bullers Road happens to be part of his building which he constructed and which was caught up by road widening. As such part of the building was demolished. By letter P3a and plan P3b, the Petitioner had requested the 1st Respondent to rectify the loss caused to the Petitioner due to demolition of part of his premises, and to grant

the adjacent land in extent of 6.85 perches. According to the Petitioner his request was considered in the manner as explained in paragraph 11 of his petition and support his position with documents P4, P5, P6 & P7. The learned President's Counsel refer to Section 40(1) F of the Municipal Councils Ordinance. The said section reads thus:

To sell by public auction or, with the prior approval in writing of the Minister, to sell otherwise than by public auction, or to lease, either in block or in parcels –

- (i) Any land or building vested in the Council by virtue of section 35 or section 37 if the prior sanction of the President has been obtained by the Council, and
- (ii) Any other land or building of the Council subject to the terms and conditions of the instrument by which the land or building was vested in or transferred to the Council, unless the sale or lease is prohibited by such instrument;

By document P6 as required by the above section the Petitioner had obtained necessary approval of the President of this country and from the relevant Provincial Minister of Local Government. Document P7/8 also support his case. A draft lease document is also annexed marked P9. Learned President's Counsel argue that the sequence of events mentioned above supported by documentation, gave rise to a legitimate expectation (as all necessary approval obtained) that there would be due compliance with the necessary approval granted and compliance with the Petitioner's request. However Petitioner contend that according to the approval granted, no lease agreement was executed in his favour and by letter P10 & P11 of 22.12.1993 & 22.3.1999

respectively was sent a reminder. It is also contended that the approvals granted as aforesaid was not revoked. By P13 the Petitioner demands the execution of the lease.

The learned counsel for the Respondent inter alia contended that the Petitioner has failed to comply with the terms and conditions of Agreement marked P2 and has failed to hand over vacant possession of the premises, and contend further that the Petitioner's application to court is belated and is futile. Learned counsel for Respondent also drew the attention of this court to the Gazette Notification of 6th February 2006 published under the U.D.A Act which declared that once as a sacred area, development and laid building lines and as such the premises in question is located within building lines (vide A, A1 B & C). These documents gives details an assist to identify the premises in question. The learned counsel submits that the Petitioner has constructed unauthorized building and as such not entitled to any relief.

The application for a Writ of Mandamus was filed by the Petitioner on or about 11th September 2009. By the said application the Petitioner has sought to compel the 1st to 3rd Respondent to execute a lease agreement based on a resolution of the 1st Respondent Council marked P4 which was approved by the 1st Respondent Council on 22.9.1989. The gap between the relief sought and the resolution P4, no doubt amounts to a very long lapse of time. Petitioner attempt to explain the lapse of time by referring to the contents in letters P5, P6, P7, P8, P10 & P11 (though between officials) and the reminder to execute the deed by P13, would not suffice in the context and circumstances of the case. These are discretionary remedies of court and the court has to apply or use its discretion having regard to the position of both parties. There is material placed

before us that the Petitioner had also breached Agreement P2, though such an Act would not strictly have a bearing to this application, if not for the long inordinate delay.

The 1st Respondent Council cannot be compelled to keep an offer open forever and ever. The 1st Respondent need to take meaningful steps in terms of the applicable statute for the benefit of the society and the community. Annexed to the objections of the Respondents are documents A, A1, B & C etc. which demonstrate a development plan which include the premises in dispute, and for the city of Colombo. Having regard to all the above matters this court is of the view that this is not a fit and proper case to exercise our discretion to grant relief to the Petitioner.

In all the above circumstances we are of the view that this application is a futile application, and accordingly we dismiss the application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

H. N. J. Perera

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-