

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

In the matter of an application for writ of
mandamus and writ of certiorari under
Article 140 of the Constitution.

Ariyaratna Ekenayake
Ekanayake Saw Mills
Hellala
Middeniya

Petitioner

Case No.CA/Writ 269/2012

Vs

1. Katuwana Pradeshiya Sabha
Katuwana
2. Ariyadasa Weerasinghe
The Chairman
Katuwana Pradeshiya Sabha
Katuwana.
3. The Chairman
Central Environmental Authority
Battaramulla.
4. B.M.U.D. Basnayake
Secretary
Ministry of Environment
Rajamalwatta Road
Battaramulla.
5. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

BEFORE : S. SRISKANDARAJAH, J (P/CA)
W.M.M.MALINIE GUNARATNE, J

COUNSEL : P.K.Prince Perera with Siripala Amarasekara,
for the Petitioner
Yuresha Fernando SC
for the Respondents

Argued on : 15.07.2013

Decided on : 01.08.2013

S.Sriskandarajah,J

The Petitioner submitted that for the purpose of carrying on a timber business he had obtained approval from the Chairman of Kaduwela Pradeshiya Sabha the 2nd Respondent. The 2nd Respondent has also issued an Environmental Protection Licence for a period of 2 years on 30/02/2006, to be operative until 30/01/2008, and thereafter it was extended for another period of 3 years from 2009 to 2012. The Petitioner further submitted that the 2nd Respondent, by letter dated 9/05/2011, informed him that his Environmental Licence was cancelled, being aggrieved by the said decision, he submitted an appeal to the Secretary, Ministry of Environment, the 4th Respondent, by letter dated 20/05/2011. An inquiry was held by the Assistant Secretary of the Ministry of Environment. In the said inquiry, the 2nd Respondent, the Chairman of the Kaduwela Pradeshiya Sabha, did not participate, but the Pradeshiya Sabha has filed written submissions for the consideration of the Inquiring Officer. After considering the submissions of the Petitioner and the Pradeshiya Sabha, the 4th Respondent had issued an order dated 8/02/2002, rejecting the appeal. The Petitioner in these proceedings has sought a writ of certiorari to quash the decision of the 2nd Respondent to cancel his Environmental Licence and also has sought a writ of certiorari to quash the decision of the Secretary to the Ministry of Environment refusing the appeal of the Petitioner.

The Respondents submitted that the authority to issue Environmental Licence was devolved to the local authorities and in this case the 2nd Respondent has issued the Environmental Protection Licence to the Petitioner, one of the conditions of the said Environmental Protection Licence is that the 2nd Respondent will inspect the premises from time

to time and give directions in relation to the implications of the said Environmental Protection Licence. In this instant case the Respondent submitted that there were several complaints from the residents of the neighbourhood complaining that the sound and dust pollution are causing disturbance to the neighbourhood and causing environmental pollution, and in view of this complains an inspection was carried out by the employees of the 2nd Respondent, and the Respondent submitted that the employees, when they went for inspection, were also threatened and prevented from inspecting the said premises, and as such, they were not in a position to exactly assess the pollution that is caused by the said factory and to give adequate directions to the Petitioner to comply with, and in those circumstances the Respondents have no option but to cancel the Environmental Protection Licence. The submission of the Petitioner that the cancellation of the said Environmental Protection Licence is arbitrary, has no merit, it appears that several directions were given by the 2nd Respondent to the Petitioner to comply with the Environmental Protection Licence but it has not been complied with by the Petitioner. In these circumstances the Petitioner's appeal from the decision of the 2nd Respondent to cancel the said Environmental Protection Licence was rejected by the Secretary, Ministry of Environment. The fact that the 2nd Respondent was not physically present in the appeal inquiry will not affect the appeal proceedings as in the appeal proceedings the 2nd Respondent has submitted sufficient material by way of written submissions and as such, the Appellant body had sufficient material to rely in dismissing the appeal of the Petitioner. Therefore, the submission of the Petitioner that the 2nd Respondent's absence in the said appeal proceedings had affected the outcome of the appeal has no merit as the 2nd Respondent has submitted written submissions giving the grounds on which he has cancelled the said Environmental Protection Licence. In these circumstances the Petitioner has not established any grounds to issue a writ of certiorari to quash the decision of the 2nd Respondent or the decision of the 4th Respondent in appeal. Therefore, this Court dismisses this application without costs.

President of the Court of Appeal

W.M.M.Malinie Gunaratne, J

I agree,

Judge of the Court of Appeal