

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

W. A. Rangith Perera of
No. 7 A3, Hanthana Housing Scheme,
Kandy.

PETITIONER

C.A 402/2009 (Writ)

Vs.

1. The National Housing Development Authority, P.O. Box 1826, 5th Floor Sir Chittampalam A. Gardiner Mawatha, Colombo 2.
2. The Manager,
The National Housing Development Authority, Kandy Branch.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera J.

COUNSEL: Rakitha Abeysinghe for the Petitioner
Chaya Sri Nammuni S.C. for the Respondents

ARGUED ON: 01.07.2013

DECIDED ON: 27.08.2013

GOONERATNE J.

The Petitioner to this Writ Application has sought a Writ of Certiorari and Mandamus to quash the plans marked P10 & P11 prepared by the 1st Respondent authority pertaining to Petitioner's housing compartment and to compel the 1st & 2nd Respondents to issue title deeds as in sub paragraph (b) of the prayer to the petition. In the petition it is averred that the 1st Respondent Authority owns the land in dispute and the said authority constructed compartments on the land under the 'Hanthana' Housing Scheme project phase - 1. Paragraphs 7 - 10 of the petition gives certain details of the Petitioner applying for a compartment in the above house scheme and that a grade 'A' housing compartment was allotted and he purchased the house in question for the amount of money referred to therein. In support of his application, payment and allocations documents P1 & P2 of the brief marked 'X' are produced.

The Petitioner's complaint is more specifically dealt with in the body of the petition. It is his position that by reference to plans produced marked P4 & P5 the Petitioner is in possession and occupation of No. 7 A3 house described therein as lots D1 & D2 depicted in the above plans prepared by one Rajapakse

was given to the Petitioner and he is in occupation for the last 25 years. Petitioner complains that title deeds had not been issued or granted to him. In support annex document P3 to show the delay on the part of the Respondent and P3 indicates that deed would be issued in due course after resolving the boundaries of the land in question. It is his case that for 25 long years no title deeds were granted to him. In support of his case the Petitioner also rely on a settlement P9 at the Human Rights Commission. Letter P9 refer to unauthorized structures. Another letter P8 is produced (it is with reference to boundaries to be shown to the Survey General's Department). P8 is also produced to support the case of the Petitioner.

The 2nd Respondent has as in letter P8 commenced another survey and the Petitioner claims it is contrary to the earlier survey done by Surveyor Rajapakse. The Survey depicted in plan P10 & P11 are contrary to plan P4 & P5. Petitioner also complain that he was not informed of above whilst executing the plans No. 365 & 367 (P10 & P11) and such a position is contrary to his legitimate expectation.

The position of the Respondents are clearly dealt with in the affidavit of the General Manager of the 1st Respondent Authority. In order to clarify the position in the light of allegation mentioned by the Petitioner I would inter alia

refer to the factual position as follows as pleaded in the affidavit of the General Manager which are noted, as follows:

10.

(a) An Agreement of Sale was signed between the 1st Respondent and the Petitioner on 01.07.1988, for the sale of house bearing No. 7/A/3 of the Hanthana Housing Scheme, as described in the Schedule to the said Agreement;

A true copy of the said Agreement dated 01.07.1988 is annexed marked R1 and pleaded as part and parcel hereof.

(b) In terms of the said Agreement marked R1 the premises mentioned in the Scheme 1 is allocated to the Petitioner for a sum of Rs. 155,000/- to be paid in installments;

(c) Schedule 1 only mentions the house bearing No. 7/A/3 and does not include lands as D1 and D2;

(d) Therefore the Petitioner cannot claim that he purchased two lots of land in addition to the house bearing No. 7/A/3 for the sum of Rs. 155,000/-;

(e) The Plan bearing No. Noora 39/1 prepared by Mr. Aelian Rajapakse is not referred to anywhere in the said Agreement marked R1;

(f) Therefore the Petitioner cannot rely on the aforesaid Plan to identify the house sold to him by the 1st Respondent Authority.

11.

- (a) Plan bearing No. Noora 39/1 was defective on the fact of it;
- (b) These defects have been brought to light as early as 1994 and remedial action was recommended;

A report of the Chief Surveyor, NHDA addressed to the General Manager dated .04.1994 highlighting the defects of the said Noora 39/1 plan is annexed marked R2 and pleaded as part and parcel hereof.

- (c) Hence, it was replaced by the Plans bearing No; 365, 366, 367, 368, 369, 371, 372, 373, 374 and 375 prepared by Surveyor Mr. U. Wasala;
- (d) Any title deed that would be issued to the Petitioner's house would be under and in terms of the Plan No. 365 and 367;

True copy of the Plan No. 365 and 367 are annexed herewith marked R3(a) and R3(b) and pleaded as part and parcel hereof.

12.

- (a) title deed are issued to the Petitioner subsequent to the full payment of the amount stated in R1 together with interest calculated accordingly;
- (b) the Petitioner had only made the full payment in 2004 at which time the Petitioner was to be issued with title deeds;
- (c) in the letter marked P3 the Senior District Manager of the 1st Respondent Authority has clearly informed the Petitioner that the delay in issuing the title deeds to the Petitioner is due to the boundary disputes on the lots bearing his house.

- (d) the Petitioners unlawful actions also caused a delay in issuing the Petitioner with title deeds for the house of the Petitioner.
- (e) in the said P3 it has been clearly stated that the Petitioner has paid the full amount due on the house bearing No. 7/A/3 of the Hanthana Housing Scheme.
- (f) the condominium plan in effect in 2004 for the Hanthana Housing Scheme, applicable to the Petitioner's house in that of Surveyor Mr. U. Wasala, already marked as R3(a) and R3(b);
- (g) therefore, once all disputes are settled title deeds can be issued to the Petitioner in terms of R3(a) and R3(b).
- (h) the Respondents deny all other averments contrary to the above in the said paragraphs.

This court observes that it is very unfortunate that a long time has lapsed without any title deeds being granted to the Petitioner. Nevertheless there appears on a perusal of the material furnished by the Respondent that there had been disputes on boundaries encroachment etc. where the 1st Respondent Authority and 'the 2nd Respondent' had attempted to resolve all those disputes. In fact the Respondent now rely on plan Nos. 365 & 367 produced P10 & P11.

We observe that over the years circumstances have changed and it is not a case where the Respondent reject or refuse to grant title deeds to the

Petitioner. The Respondents are always willing to perform their part of the obligation but to issue the deeds on plans P10 & P11. The condominium plan in effect in 2004, for the Hanthana Housing Scheme is shown in plans R3a & R3b of Surveyor U. Wasala. Deeds are also to be issued as per plan R3a & R3b. The sales agreement R1 refer to House No. 7/A3 but makes no reference to lands D1 & D2 as pleaded by the Petitioner.

This court having considered the case of either party, is of the view that the Petitioner though deprived of a valid deed for some time due to reasons gathered above, would not be entitled to invoke the writ jurisdiction of this court. It also appears that some of the material facts are also in dispute. The review procedure would not be well suited for the determination of disputed facts 2001(3) SLR 330; 1981 (2) SLR 471. On the other hand I would also consider the facts set out above may lead to an administrative inconvenience if the writs sought are issued. The 1st & 2nd Respondents no doubt had taken sometime to resolve some disputes. That would not mean that the writ jurisdiction could be invoked so easily. The authorities concerned have not refused or rejected to grant the title deed to the Petitioner. Delay in doing so seems to be due to presentation of plans P10 & P11. These are matters to be resolved between parties, and Petitioner should cooperate with the Respondents and sought it out. As such in

the above circumstances court cannot exercise its writ jurisdiction in favour of the Petitioner.

Therefore we are 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

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL