

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

Ajith Priyantha Hettiarachchi  
No. 604, Main Street,  
Kaduruwela, Polonnaruwa.

**PETITIONER**

C.A 216/2009 (Writ)

Vs.

1. N. P. Panditharathne  
Divisional Secretary,  
Divisional Secretariat,  
Thamankaduwa.
- 1A. E. M. D. S. Ekanayake  
Divisional Secretary  
Divisional Secretariat,  
Thamankaduwa.
2. Commissioner of Lands  
No. 7, Gregory's Avenue,  
Land Commissioner's Department  
Colombo 7.
3. R. K. S. Sarathchandra Wijesinghe  
Provincial Land Commissioner,  
North Central Province,  
Provincial Land Commissioner's Department,  
Anuradhapura.

8. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.  
**AND 04 OTHERS**

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** Razik Zarook P.C. with Rohana Deshapriya and  
Chanaka Liyanage for the Petitioner  
Yuresha Fernando S.C., for 1<sup>st</sup> – 3<sup>rd</sup> & 8<sup>th</sup> Respondents  
H. Withanachchi for the 4<sup>th</sup> Respondent

**ARGUED ON:** 23.05.2013

**DECIDED ON:** 31.10.2013

**GOONERATNE J.**

This Writ Application pertains to the issue of permits under the Land Development Ordinance. Petitioner claims to be the occupier of State land as described as lot 1129 2/3 in Survey General's Plan No. ISPP22 & FTP9 and plan 38. Writ of Certiorari is sought to quash letter marked P25 and a Writ of Prohibition

to prohibit the holding of any further inquiries or issue of permits as per P25. A mandamus is sought to grant a permit to the Petitioner as prayed for in his petition. It is pleaded that Petitioner's father one H.W Piyaratne was granted an annual permit (P1) with effect from 9.5.1983. In the submission it was mentioned that the Petitioner's grandfather (Alwis) was the original permit holder. Although writs are sought, the grievance of the Petitioner is mainly against the 4<sup>th</sup> Respondent, who also would be entitled to some land as per letter P25. 4<sup>th</sup> Respondent as pleaded by the Petitioner is in possession of two buildings of the land in question.

Petitioner seeks to establish in a way, that he continued to reside on the land in dispute after the demise of his parents (vide Death Certificate P4 & P5). Letter P9 is not denied or rejected by the Petitioner. i.e to issue permits based on possession of Petitioner and 4<sup>th</sup> Respondent. P9 is dated 1.6.2004. I also find reports P10a & P10b pertaining to Petitioner and building permit P11 (recommendation to build in favour of Petitioner). Documents P12, P13 & P14 are favourable to the Petitioner. However there is no finality for same.. We have also made a note of several other documents placed before court, by the Petitioner e.g disturbance to possession, Magistrate's court proceedings etc.

The case of the Petitioner with the documents produced on his behalf place more emphasis on legitimate expectation. Decision of the authorities concerned is more on an equitable basis to divide the land in dispute equally, between Petitioner and 4<sup>th</sup> Respondent.

The learned State Counsel invited this court to the contents of the documents and pleadings submitted on behalf of 2<sup>nd</sup> & 3<sup>rd</sup> Respondents. 2R1 a certified copy of the approval for long term lease in favour of 'Alwis'. Since it was found that 'Alwis' had disposed parts of the land to two others, it was decided to lease unto Alwis only the portions of land he was in possession. (2R2). Accordingly a fresh approval signed by Alwis submitted (2R3). These Respondents emphasize that at the time of death Alwis possessed on a lease for 30 years and not on a permit in terms of the Land Development Ordinance as claimed by the Petitioner. Document P1 is an annual permit and is not an annual lease as claimed by the Petitioner (issued to H.W. Piyaratne). The said Piyaratne was issued an annual permit prior to the above mentioned lease to Alwis was finalized in 1984. However with the demise of Alwis on 11.11.1984, the lease and administrative procedures relating to it came to an end and Wilbert Piyaratne continued with the annual permit.

The 4<sup>th</sup> Respondent's position is that during the life time of the original permit holder (father of the Petitioner) Wilbert Piyaratne and 4<sup>th</sup> Respondent resided on the land under their father, Alwis. 4<sup>th</sup> Respondent denies P1 is a valid document. It is revealed that H.W. Piyaratne and 4<sup>th</sup> Respondents were brought up and adopted by the original permit holder Alwsi (the position of the state is that Alwis was given only a lease), as his own children. The said Piyaratna and the 4<sup>th</sup> Respondents were children. The said Piyaratne and the 4<sup>th</sup> Respondents were living in the same household of the putative father Alwis (4R1 & 4R2). I would refer to some of the paragraphs in the affidavit of the 4<sup>th</sup> Respondent for purposes of clarity.

- (i) That prior to the death of the father of the 4<sup>th</sup> Respondent, Alwis the then Land Commissioner had taken steps to grant a long lease (99 years) to him and matter got delayed due to the fact that the said Alwis had disposed of two small extents from the said land.
- (ii) That thereafter by letter dated 09.05.1983 the Assistant Land Commissioner of Polonnaruwa under Ref. No. L/13/2386 made a recommendation that the said Alwis should be given long lease of the area which was actually in his possession.
- (iii) That the said Commissioner by letter dated 05.10.1984 had notified, the said Alwis to be present on any weekday with 2 witnesses in order to sign the instruments relating to the long lease.

- (iv) That while the long lease was being finalized in favour of the father, the said Wilbert Piyaratne had surreptitiously obtained an annual permit (P1) which was void 'ab initio' owing to the fact that the permit granted to Alwis was in operation up to the time of his death in November, 1984.
- (v) That the Action bearing No. 4081/L instituted by the said Piyaratne against the 4<sup>th</sup> Respondent in the District Court of Polonnaruwa claiming title was dismissed on 24.07.2002.
- (vi) That in the meantime the petitioner instituted Testamentary Case No. 32/T/97 in the District Court of Polonnaruwa for the proof of Last will purportedly executed by the said Piyaratne in which the land in suit was also included.
- (vii) That however after objections by the 4<sup>th</sup> Respondent the probate in the case was confined only to the land also given by the State on permit, containing in extent 1A 1R 22P.
- (viii) That during the lifetime of the father of the said Piyaratne and the 4<sup>th</sup> Respondent, the desire and the intention was that the land in suit should devolve on the two sons equally and the said Alwis had deposed to an affidavit dated 15.01.1984 to that effect.

This court having considered the case of each party is of the view that the authorities concerned had from time to time heard both the Petitioner and the 4<sup>th</sup> Respondent and arrived at an equitable proper decision in letter P25 on the basis of whatever rights flowing to both Petitioner and 4<sup>th</sup> Respondent from their putative father. We are not inclined to extend the writ jurisdiction of this court to

disturb the impugned decisions contained in letter P25. The Petitioner cannot be entitled to a major share. Land Development Ordinance was enacted to provide for the systematic development and alienation of state land. As such the authorities concerned with that view, decided upon an equitable alienation when issuing letter P25. Further the authorities concerned had fulfilled the required public and statutory purpose to arrive at the decision in P25. The documents presented by the Petitioner may give rise to an expectation but certainly it cannot be described as 'legitimate expectation', the required standard adopted in law in writ applications.

This court observes that mere favourable documentation presented at a certain point of time should not be the basis to issue prerogative writs, which is a discretionary remedy of court. There is no total denial of entitlement to the property as far as the Petitioner is concerned. Authorities concerned had made it very clear after inquiry, may be at various stages of the proceedings the method of distribution of the property in dispute. As such a decision made by the official Respondents cannot be subject to the writ jurisdiction of this court. Petitioner has not been successful in establishing a proper basis to consider the issuance of a

Writ of Certiorari. There is no public or a statutory duty to be fulfilled, since the authorities, we find had followed the prevailing and applicable regulations, and as such Writ of Mandamus cannot be issued.

We would before concluding this judgment incorporate in this judgment the following authorities pertaining to Mandamus, which need to be considered.

P.K. Benerjee vs. L.T. Symond. His Lordship further stated that:

Whether the facts show the existence of any or all prerequisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right, not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.

The Court of Appeal in A.K.Azmy and N.P.M. Iqbal v. Tissa Attanayaka and 5 Others:

held that a ministerial function (performance of a duty as prescribed by the law and not a discretionary function) is not amenable to the prerogative writ jurisdiction.

In Eksath Kamkaru Samithiya v. Commissioner of Labour and Others.

The Court of Appeal per J.A De Silva J held that the cardinal principle of law relating to the writ of mandamus is that the writ lies to compel a person to perform an act only when there is a duty cast on such person to do so. In this case a writ of mandamus was sought to compel the



Commissioner of Labour to hold a fresh inquiry into a complaint made by the petitioner under the Termination of Employment Act. His Lordship held that there is no obligation or legal duty cast on the Commissioner of Labour to make an order under Section 6 of the Termination of Employment Act.

It has been held that matters within the purview of private law do not attract remedies available in public law.

In *Mendis v. Seemasahitha Panadura Janatha Santhaka Pravahana Sevaya and Others*, S.N. Silva J. held that:

... the writ of mandamus lies to enforce the performance of a statutory duty by a Public Authority. The enforcement of a contract of employment pertaining to a company registered under the Company Law is regulated by its articles of association and is solely a matter within the purview of Private Law and not a matter for judicial review.

In all the above circumstances we are not inclined to grant relief to the Petitioner. As such we dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL