

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

**Case No. CA (Writ) 331/2008**

C.P. Kalpage  
No.6, 1<sup>st</sup> Lane,  
Nuwara eliya.

**Petitioner**

**Vs.**

Central Environment Authority  
"Parisara Piyasa",  
104, Dencil Kobbakaduwa Mawatha,  
Battaramulla.

And 05 others

**Respondents**

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

In the matter of an application for mandate  
in the nature of Writ of Mandate and writ of  
certiorari in terms of Article 140 of the  
Constitution.

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**C.A. (Writ) Application No. 331/08**

<b><u>BEFORE</u></b>	: Deepali Wijesundera J.
<b><u>COUNSEL</u></b>	: Manohara De Silva PC with H. Munasinghe for the Petitioner.  Viveka Siriwardena SSC for 1 <sup>st</sup> , 2 <sup>nd</sup> , 5 <sup>th</sup> to 8 <sup>th</sup> Respondents.  Rohan Sahabandu PC with Ms. Hasitha Amarasinghe for 3 <sup>rd</sup> and 4 <sup>th</sup> Respondents.
<b><u>ARGUED ON</u></b>	: 31 <sup>st</sup> October, 2013
<b><u>DECIDED ON</u></b>	: 30 <sup>th</sup> January, 2014

**Deepali Wijesundera J.**

The petitioner has filed this application against the respondents for writs of certiorari to quash the decisions dated 05/06/2007, 02/11/2007 and 05/12/2007 marked as **P18, P25** and **P27** sent by the 2<sup>nd</sup> respondent refusing permission to construct a building in the land described and also to quash the order made under *section 24C and 24D of the National Environmental Act No. 47 of 1980* in document marked **P20**. And also for a writ of Mandamus to direct the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to grant approval to construct a building in the said land.

The petitioner was in possession of a state land which was 15 perches in extent situated at Gemunupura, Nuwara Eliya. This land was given to him in terms of a permit issued under the State Lands Ordinance, which was required to be renewed annually. He was entitled to construct on this land with the permission from the Government agent and he was granted permission to construct vide **P3, P4, P5** and **P6** but he did not construct during this time. In 2004 the petitioner has made an application to extend the permit to commence construction work and was informed that the said area has been declared as a "Reservation". He appealed against this to the Urban Development Authority and by letter dated 08/09/2006 was informed that the cabinet has declared this

area as an "Environmental Protection Area" and he cannot construct without permission from 1<sup>st</sup> and 5<sup>th</sup> respondents. By *Gazette No. 1487/10* dated 05/03/2007 the said area was declared as "Lake Gregory Environmental Protection Area" and the petitioner has abandoned the idea of constructing a dwelling house. He has made an application to construct a Recreational Club on the said land (marked **P24**), which the petitioner stated is a permitted use for which the said land could be utilized under *schedule II* of the said *Gazette*. He was refused permission by the Central Environmental Authority by document marked **P25**. The petitioner stated that this is an erroneous interpretation of the said notice and that there are several houses and buildings constructed in the land located around the land in question.

The petitioner stated that the Central Environmental Authority refused to grant permission to construct a Recreational Club on the assumption that there is a permanent forest cover in the said land and that the construction will destroy the said forest cover, but that the land in question does not have a permanent forest cover. Petitioner submitted that there was no legal justification for the 1<sup>st</sup> and 2<sup>nd</sup> respondents to refuse permission to the said construction hence the decisions contained in **P18**, **P25** and **P27** are arbitrary and ought to be quashed. Further he stated that the *Gazette* by the Minister of

Environment and Natural Resources bearing No. 1487/10(2R2) is unreasonable and mala fide.

The respondents submitted that the permit under which the petitioner claims the land was issued by the Divisional Secretary of Nuwara Eliya who is a necessary party to this application has not been made a party and the failure to do so is a serious lapse and therefore this application should be dismissed in limine. Respondents stated that the petitioner has failed to explain the delay in filing this application since his request was refused on 05/06/2007(2R3). The Central Environmental Authority has thereafter sent several letters regarding this application they are marked as 2R4 A and 2R4 B.

The respondents also argued that the petitioner has failed to exhaust the right of appeal to the Secretary to the Ministry of environment under Sec. 23DD therefore the discretionary remedy of issuing a writ should not be exercised in favour of the petitioner.

The Respondents also stated that the petitioner failed to show that he had a valid permit to the said land to this argument the petitioner stated that the issue was not the permit but the refusal to grant permission to build. No one can build on a state land without a valid permit.

The respondents stated that the land in question falls within permanent forest cover under *Gazette No. 1487/10 Part I and Part II of schedule II* therefore it should be maintained as a permanent forest cover and can not be used for any other purpose.

The documents presented (**P12, P13, P15**) 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 favorable documentation presented at a certain point of time should not be the basis to issue prerogative writs which is a discretionary remedy of court.

The petitioner was granted a permit to develop the said state land in 1985 according to his own document **P2(a)** and permission to build a house was granted in November 1985 according to **P3** but he has not developed the land until that area was declared as a "Forest Reserve". The reason to maintain a permanent forest cover in the area described in *Part II of schedule I* is to prevent soil erosion and the land has to be preserved to save the environment. Having idled since 1985 when he was in possession of a valid permit he cannot now claim to have any right to construct.

Petitioner did not act under *section 23DD* where he had the right to appeal therefore he cannot ask for discretionary remedy to be exercised. He has not explained the delay in making this application.

This court having considered the case of both parties cannot conclude that the authorities concerned acted maliciously merely because the petitioner had not been granted a permit and allowed to construct in the said land in comparison to other lands in the area. It is also a difficult question in the context of this case to conclude that the authorities concerned were discriminatory of the petitioner. Nor can I find sufficient material to issue a writ of Mandamus in the manner pleaded and prayed for in the petition. The required statutory duty and or the public duty to issue a writ of Mandamus does not seem to surface from the available material.

What remains to be decided is whether a writ of certiorari could be issued in the circumstances of this application. Even if certain grounds that need to be established for the issue of certiorari cannot be easily proved the reasonableness of the decision contained in documents **P18, P25, P27** need to be considered. A decision which is found to be unreasonable or irrational is liable to be quashed by a writ of

certiorari. In view of the *Gazette No 1487/10* these documents does not fall within this description.

For the afore stated reason the application of the petitioner is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL.**