

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

Herath Mudiyanse Lage Piyasena alias
Herath Mudiyanse Lage Piyasena Kaluhendiwala
Wessagiriya, Kaluhendiwala,
Thalawatte Gedera.

PETITIONER

C.A. 04/2012

Vs.

1. Divisional Secretary
Divisional Secretariat,
Polgahawela.
2. Commissioner General of Lands,
Land Commissioner General Department
No. 7, Hector Kobbekaduwa Mawatha,
Colombo 7
3. The Secretary
Ministry of Lands & Land Development
Battaramulla.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Chula Bandara with Sidath Bandara for the Petitioner
Chaya Sri Nammuni S.C for Respondents

ARGUED ON: 07.11.2013

DECIDED ON: 29.04.2014

GOONERATNE J.

The Petitioner in this application seeks a Writ of Mandamus directing the Respondents to hand over the land Grant issued in the name of the Petitioner pertaining to a land described in the body of the petition and in sub para (b) of the prayer to the petition. To state very briefly the facts of this case, the land in dispute which belonged to the Petitioner's family was acquired on or about 1977 (acquisition notices are produced P1 to P3). At the time of acquisition and as referred to in Section 17 award of the Land Acquisitions Act, there were 4 co-owners (P4) all being family members of the Petitioner's family. It is pleaded that the land was acquired for the purpose of constructing a play ground for the school described in para 7 of the petition. However Petitioner pleads that for over 15 years the State failed to utilize the land for the intended public purpose. As such the Petitioner by letter P5 of 24.8.2007 requested the Minister concerned to re-transfer or divest the land in dispute.

By letter P6 of 15.6.2008 a letter renouncing each persons' rights are also produced along with the petition. However P6 refer only to their names and submission of letters. Petitioner also produced letter P7 wherein the Ministry of Lands and Land Development inquire from the Education Minister as to whether the land could be divested. It is the position of the Petitioner that the Education Ministry agreed to divest the land on the condition that the value of the land be paid back to the State. Petitioner claims he paid the cost of retransferring the land but the 1st Respondent by P8 of 18.1.2010 requested Petitioner to attend an inquiry. Letter P9 is supportive of the Petitioner (as pleaded in para 13) to finalize the issuance of a land Grant in the name of the Petitioner, P10 (date not clear as it reads 2001.1.6) is another letter supportive of Petitioner's position. The Petitioner also gives some details of the purported land granted supposed to be issued in favour of the Petitioner (land Grant issued in the name of the Petitioner bearing No. 4.10.14526).

Petitioner also plead that the authorities concerned called the Petitioner for an inquiry (vide P11 & P14). Petitioner states that he was unable to attend the inquiry for the reasons pleaded in para 18 & 22 of the petition. Petitioner also state that since the authorities refrained from handing over the land Grant, letter P15, was dispatched through a lawyer and Petitioner

received P16 which state that inquiries are being concluded and on completion of inquiries Petitioner would be notified. However there had been no positive response to the Petitioner demand for a land Grant and the Petitioner blames the Respondents for not taking the required steps, and moves for the writ prayed for in his petition.

The Respondents in their objections do not deny that the land in dispute was not put into the use for what it was acquired. The Ministry of Education did not construct the play ground for the school for long years even though it was acquired for that purpose. The position of the official Respondents are clearly reflected in documents R1, R2 & R3. On the requests made by the Petitioner R1 was dispatched to 1st Respondent to ascertain the present position in view of the position but discussed above. R2 is a letter verifying the position whether the land could be divested since same was acquired and compensation was paid to the owners (Section 17 award) R3 is an important letter recommending to release the land to the Petitioner after recovering the market value of the land. R4 is a request by the Petitioner to release the land after the paying the compensation and interest on it.

However this court need to take notice of the following paras of the objections which indicate the difficulties encountered by the Respondents in releasing the land to the Petitioner.

1. The Respondents state that upon the 1st Respondent asking the Petitioner to pay a sum of Rs. 26,009.28 in order to have the land released to him, the Petitioner by his letter dated 18.12.2009, informed that he is unable to pay the said amount and could only pay a sum of Rs. 16,000.
2. The Respondents state that the eldest son of H.M. Punchi Banda, namely H.M.W.S.B. Kaluhendiwala, has written to the 1st Respondent by letter dated 25.12.2009, stating inter alia that he revokes his consent for the land being divested only to the Petitioner.
3. Answering paragraph 12 of the petition, the Respondents state that the 1st Respondent by his letter dated 29.12.2009 informed the 2nd Respondent regarding the objections of divesting the land in the Petitioner. On the direction of the 2nd Respondent by his letter dated 6.10.2010, an inquiry was called for on 24.2.2010.

It is evident that on perusing the material placed by either party a land Grant was prepared or was being prepared in the name of the Petitioner. It was unfortunate that as explained by the Respondents there were objections for the land Grant to be issued to the Petitioner, and Petitioner had been summoned for inquiries. The tone of the objections does

not indicate that the Respondents were willfully attempting to prevent the Grant being issued to the Petitioner. The letter at R11 fully explains the position of the state. It is apparent that others had objected to the Petitioner being made the sole grantee of the land Grant. As such the Respondents seem to have been placed in a difficulty and the contents of paras 4 & 5 of letter R11 cannot be taken lightly by this court. Above all letter R12 gives a clear indication as to how the State wished to proceed in issuing the land Grant in question. The last para of R12 and the 2nd para of same does not favour the Petitioner as the state intends to act in terms of Section 3 of the State Lands Ordinance and a decision to issue the land Grant to 4 allottees (heirs).

The learned counsel for Petitioner has referred to certain legal provisions in his written submissions and he did so even in his oral submissions to this court. I have noted all those submissions. In fact I do appreciate the legal attitude and thinking of the learned counsel for the Petitioner.

Learned counsel for Petitioner had cited the case of Kalu Banda Vs. Upali SLR 391 Vol. 13 of 1999. This case relates to cancellation of lease issued by the President.

In that case Hector Yapa J. stated:

I am unable to subscribe to the view, that a lease permit granted by the President of the Republic of Sri Lanka, for a period of 30 years could be cancelled for whatever reason, without giving an opportunity to the holder of such permit to show cause Therefore, where provision is made by law in regard to the procedure to be followed when cancelling a lease permit granted to a person there is no reason why such procedure should be ignored or overlooked. Such conduct would be illegal and arbitrary and offend the fair administrative procedure expected from public authorities.

On the other hand, even if there was no provision made for a party to be heard before his lease permit is cancelled; principles of natural justice will supply the omission of the legislature. The reason being that the court will not readily accept the position that the Parliament intended an administrative authority to exercise a discretion vested in it by statute, in such a manner so as to offend the principles of natural justice

The above case more or less apply to land issued under a permit. Nevertheless the Dicta in the said case is of immense importance. However the situation as at the date of dispute of R12 is very much different from what is sought by the Petitioner as per the prayer to the petition. This court will not comment on the matters referred to in letter R12. If not for letter R12 Petitioner may have been entitled to relief. Petitioner no doubt had an

expectation to get the Grant in his favour. Unfortunately the authorities concerned seems to have entertained objections of other co-owners. As such this court will have to be mindful of the consequences in view of R12, since the land remains State land for all purposes, until a valid disposition.

A mandamus is only granted to compel performance of a duty of a judicial character where there has been a refusal to perform it in any way and not where it has been done in one way rather than another even though the method pursued may have been erroneous. Still less will the Court take upon itself to upset what amounts to a judicial decision based upon evidence and to direct a public officer to come to an opposite decision upon evidence which was not before him. 30 NLR at 84. A mandamus will not be granted to correct an erroneous decision as to fact 2 C.L.W 14: 10 Times 65; 12 Law Rec. 176. The grant of a mandamus is a matter for the discretion of the Court. It is not a Writ of right and is not issued as a matter of course. 1 C.L.W. 306. It is a rule almost inflexible that a mandamus will not be allowed where there is an adequate alternative remedy. 17 N.L.R at 318; 2 C.L.W. 330; 35 N.L.R 225.

The Court before issuing a writ of mandamus is entitled to take into consideration the consequences which the issue of the writ will entail. 34 N.L.R. 33. A mandamus will not issue where it would be futile and could not be obeyed. 33 N.L.R. 257; 1 C.L.W. 109, nor where its obedience by the officer to whom it is addressed will involve the violation by him of some other provision of law. 9 Times 70. A party applying for a mandamus must make out a legal right and a legal obligation 1 N.L.R at 35.

In the above circumstances I am unable to exercise and extend the writ jurisdiction in favour of the Petitioner. As such application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL