

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

E.M.M.B. Ekanayake
"Rohana",
Bogahakumbura.

PETITIONER

C.A 585/2010 (Writ)

Vs.

1. Anura Priyadarshana Yapa
Hon. Minister of Environment & Natural Resources
Ministry of Environment & Natural Resources
82, Rajamalwatta Road,
Battaramulla.
2. M. A. R. D. Jayathillaka
Secretary,
Ministry of Environment & Natural Resources
82, Rajamalwatta Road,
Battaramulla.
3. B. A. Peiris
Deputy Director (Mines)
Geological Survey and Mines Bureau,
4, Senanayake Building,
Galle Road, Dehiwela.
4. Road Development Authority
Sethsiripaya,
Battaramulla.

5. E. M. S. B. Jayasundera
Divisional Secretary,
Divisional Secretariat,
Welimada.

6. Keangnam Lanka (Private) Limited
815, E.W. Perera Mawatha,
Ethul Kotte,
Sri Jayawardhanapura.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Sumedha Mahawanniarachchi with J. Senanayake
For the Petitioner

H. Withanachchi for the 6th Respondent

Yuresha Fernando S.S.C. for the 1st – 5th Respondents

ARGUED ON: 22.11.2013

DECIDED ON: 06.05.2014

GOONERATNE J.

The Petitioner in this application has sought a Writ of Certiorari to quash document marked P21 dated 12.3.2010 (decision made on an appeal operate a quarry). A Writ of Mandamus is also sought directing 3rd & 4th

Respondents to issue a permit. In the body of the petition it is pleaded that as far back as 1995 an application was made to operate a government quarry within the Divisional Secretary's Division of the 5th Respondent. Thereafter the Petitioner was called upon to make an application to the relevant authorities (vide P1) and accordingly letter P2 & P3 are also produced, supporting the case of the Petitioner. However it is pleaded that by letter P4 of 8.1.1996 the area officer of the 4th Respondent informed the Petitioner that the quarry cannot be operated as there is a risk to the road, other structure close by and of land slides. Thereafter about 2 years later by letter P5 of 23.1.1998 informed that although the quarry cannot be operated as stated above, part of the rock need to be removed as informed by the Road Development Authority (R4).

In the submissions made before this court and the material contained in the petition, it is stated that by letter P5 of 23.1.1998 although the position in letter P4, authorities requested the Petitioner to get the 4th Respondent to demarcate the portion of the rock that has to be removed.

Thereafter, and from that point of time the Petitioner was trying to get the 4th Respondent the Road Development Authority to demarcate the particular rock as directed by the 3rd Respondent. It is the position of the Petitioner that the officers of the 4th Respondent deliberately delayed the

required demarcation. Petitioner also pleads that all this was due to a Provincial Council Member who was to be given the contract. Having waited for a considerable length of time the Petitioner by P6 of 14.11.2006 requested the Divisional Secretary of Welimada to at least consider a new application. Even this attempt according to the Petitioner did not bring any results. It is pleaded that the Petitioner met several persons in authority, without success. In paragraphs 16 and 18 of the petition certain letters are pleaded (P9 & P10) where a decision is taken to refuse permission to operate a quarry.

Then Petitioner appealed (P11) from the above decisions to the 2nd Respondent (as indicated in P10). However by P20 & P21 Petitioner's appeal was rejected. The Petitioner pleads the following grounds to obtain a Writ of Certiorari.

1. The Petitioner pleads that it is unreasonable to have permitted others to operate the aforesaid quarry regarding the operation of which, the Petitioner made an application as far back as 1995 and that the Petitioner is personally aware that to grant approval to others, the geological survey reports and other relevant material were obtained from the file opened at the 3rd Respondent's Bureau in relation to the Petitioner's application.
2. In the circumstances, the Petitioner pleads that a cause of action has accrued to the Petitioner to invoke the jurisdiction to obtain a Writ of

certiorari against the 2nd Respondent quashing his decision marked P21 as it is arbitrary, unreasonable and ultra vires and to obtain a writ of Mandamus against the 3rd & 4th Respondents directing them to permit the Petitioner to operate the aforesaid quarry.

The 3rd Respondent has pleaded inter alia the following grounds.

- (i) The Petitioner has failed to specify the person against whom a writ of mandamus could be issued;
- (ii) The Petitioner's claim for a quarry licence is not based on any cognizable legal right of legitimate expectation;
- (iii) The matter is only of academic interest as all licences for quarrying activities have now been revoked as the site is within the auspices of an ADB project;
- (iv) The granting of the reliefs prayed for would result in disastrous consequences as the site is now part of a project funded by the ADB and is being operated by the 6th Respondent subsequent to an award of the Contract after having followed proper tender procedures;
- (v) The Petitioner has neglected and/or failed to explain any reasonable cause for delay in seeking relief and is therefore guilty of laches;
- (vi) The Petitioner has misrepresented and/or suppressed material facts to Court and lacks *uberima fides* necessary to seek prerogative relief;
- (vii) The Petitioner has failed to adduce satisfactory evidence in support of his application.

The position of 1st, 2nd & 3rd Respondents could be summarized as follows.

It appears on a perusal of these proceedings that the factual position has been highlighted. A site inspection had been done at the relevant site. The observations of the Chief Inspector of the 4th Respondent had reported that to conduct of quarrying activities would be harmful to the river bunt of 'Oma Oya' situated close to the proposed site which could cause earth slips in the surrounding hills. As such no licence had been issued to conduct quarrying operations (5R1). Part of the rock situated in the proposed mining site needed to be removed in order to widen the Peradeniya – Badulla – Chankadali road. As such there was a necessity to remove part of the rock, a decision had been taken by the Chief Engineer of the 4th Respondent to permit the conduct of quarrying activities by persons, subject to specification and as to the manner of conducting such activities (5R2). It is pleaded that requests were made from time to time by several interested persons but the Petitioners had not expressed an interest. Agreements were entered with such persons. Petitioner's purported application 5R3 was incomplete.

This court also had the benefit of hearing the counsel for the 6th Respondent. He drew the attention of this court to the several grounds urged by the Petitioner seeking prerogative writs. It was his position that the several grounds urged are not correctly established, to enable this court to exercise the writ jurisdiction considering the factual position and the ground situation, and as such the Petitioner would not be entitled to get relief from this court.

In all the facts and circumstances of this case it appears to this court that the factual and the ground situation of the site where quarry had to be done does not favour the Petitioner since the Respondents have adduced material to indicate that due to road widening and quarrying activities for that purpose of removing portions of rock, had been taken over by the 6th Respondent. As such all prior permissions given to several parties to conduct of quarrying activities had been revoked. It is the view of this court that the factual position which surface from the pleadings and submissions of Respondents would not entitled the Petitioner to invoke the Writ jurisdiction of this court. There is nothing unreasonable or arbitrary in conveying the decision in P21 based on the material contained therein. There is no basis to interfere in the decision P21.

It is also noted that on Petitioner's own admission as pleaded, on or about 1996 Petitioner was informed and was given a negative reply. Thereafter again in 1998 part of the rock was to be removed, due to obstruction, an attempt was made by the Petitioner to get some right for removing that part of the rock without success. This court observes that this is a long drawn out process and an unsuccessful attempt on the part of the Petitioner. As such the Petitioner cannot as of a right to demand the right to quarry or obtain a permit without satisfying the authorities the basic requirements to obtain a permit or to enter into a contract for the purpose of removing part of the rock. So many years lapsed from the year 1996. Where Petitioner received only negative answers from the authorities concerned.

This is a project where the 6th Respondent was awarded a tender in 2008 to rehabilitate and upgrade a main road. The funding made available by the Asian Development Bank. Thereafter the 6th Respondent had a bigger and an important role to play. The 6th Respondent obtained all necessary approval and a valid licence for the purpose (6R2, 6R3, 6R4 & 6R5). It is a futile exercise to interfere and grant any relief to the Petitioner in the context of this application. A court will always before issuing a writ is

entitled to consider the consequences by which the issue of the writ will entail. 34 NLR 33. On the other hand as regards Mandamus, in point of law the Petitioner has no status to make the application for a Mandamus because no duty is owed to him by the Respondents and the Petitioner should fail on that ground also Sansoni C.J Weerasinghe Vs. Samarasinghe (1966) 68 NLR 361, 366. Finally I observe that a writ will not be issued to quash a particular exercise of power if it is futile to do so because it is no more operational or it had its effect.

As such the Petitioner has not adduced any material to enable court to exercise the Writ jurisdiction. This is a futile exercise. Application is dismissed without costs.

Appeal dismissed.


JUDGE OF THE COURT OF APPEAL