

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRILANKA**

**In the matter of an Application for order in
the nature of Writ of *Certiorari* in terms of
Article 140 of the Constitution of The
Democratic Socialist Republic of Sri Lanka**

Ranil de Silva,

No.5/6, Capitol Residencies,

65, Darmapala Mw,

Colombo 07.

Petitioner

CA /Writ / 155/2014

Vs,

- 1. Director- General,
Coast Conservation and Coastal,
Resource Management Department,
4th Floor,
Ministry of Fisheries Building,
New Secretariat,
Maligawatta, Maradana,
Colombo 10.**
- 2. Gamini Hewage,
Acting Director,
Coastal Resource Management Division,
Coast Conservation and Coastal,
Resource Management Department,
4th Floor,
Ministry of Fisheries Building,
New Secretariat,
Maligawatta, Maradana,
Colombo 10.**
- 3. Poojitha Prabath Weerawardana,
No. 385B, Galle Road,
Kosgoda.**

Respondents

Before

**: Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel

: Avindra Rodrigo with Nimesha de Silva and Manoj Silva

for the Petitioner

Palitha Kumarasinghe PC with Jafner de Mel for the 3rd Respondent

Janak de Silva DSG with Suranga Wimalasena SC

for the 1st, 2nd Respondents

Inquiry On : 25.03.2015

Written Submissions On: 31.03.2015

Order On : 19.06.2015

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner has filed this Application seeking inter alia,

- a. make an interim order restraining the 3rd Respondent and/or his servants, against and/or employees from engaging in any development activating in whatever form including but not limited to any activity likely to alter the physical nature of the Coastal Zone in any way and including the construction of the buildings and works, the deposit of the water or other material from outfalls, vessels or by other means, the removal of sand, sea shells, natural vegetation, sea grass and other substances, dredging and filling, land reclaiming and mining or drilling for material, pursuant to the purported permit here in before marked as **P-23** until the final determination of this application.

- d. issue a mandate in the nature of a writ of Certiorari to quash the purported permit issued by the 2nd Respondent here in before marked **P 23**.

This matter was supported for notices on **26.06.2014** and the court decided to issue notices on Respondents. Counsel for the petitioner reserved his right to support for interim relief at that stage. The matter went down for number of occasions for objections of the respondents. In the mean time Petitioner by way of a motion dated **22nd January 2015** moved court that he be permitted to support for interim relief, for the reasons set out in the said motion. When the matter came up for support the interim relief, learned Senior State Counsel who represented the 1st and 2nd Respondents informed court that the 1st and 2nd Respondents will not take part in the inquiry for interim relief and abide by the decision of this court.

Petitioner to this application owns a land called Yowunpitiya alias Yonunnepitiya at Kosgoda since March 1997. He constructed a 4 bed roomed villa in the said land in 1999; however the same was destroyed by Tsunami in 2004.

Thereafter upon obtaining necessary approvals including from the Coast Conservation and Coastal Resource Management Department (here in after referred to as Coast Conservation Department) he built a two story, four bed roomed villa, which was named "Saffron and Blue". The management of the said villa was handed over to a tour operator in the year 2012.

A block of bear land situated between the petitioners land and the shore which was used by the Public to access the beach, was suddenly fenced off in the year 2012. When the villages protested over this incident, a concrete road was built outside the land to provide access to the beach by the Pradeshiya Saba. When made inquiries, the petitioner came to know that the said land was belonging to a temple in the area, Ganegodalla Rajamaha Viharaya, and the land had been leased out to the 3rd Respondent by the said Temple for a period of 35 years.

Petitioner's complaint in this case is mainly under the provisions of Coastal Zone, Management Plan prepared under the provisions of the Coast Conservation Act.

Petitioner has referred in his petition the requirement under section 6 to establish Coast Conversation and Coastal Resource Management Council (also referred to an Advisory Council) and to formulate a Coastal Zone Management Plan (also referred to as CZMP) in terms of Section 12 of the said Act.

The CZMP currently in operation is the one prepared in 1997, copy of which is submitted by the Petitioner Marked **P-2**.

Petitioner refers to several applications made by the 3rd Respondent to the Coast Conservation Department which were refused by the said department and finally refers to a document marked P-20 where permission was granted to construct of a two storied Ayurvedic SPA building for a total floor area of 3021 sq.feet with a setback Variance of 15 m. Paragraph 9 of P-20 reads as follow;

9. Details According to the Criteria for Granting set back Variances

9. 1). Is the proposed development activity strictly limited to the Restricted (soft) Area?

Yes, within the Restricted area

a). coastal Segment under the CZMP;

Balapitiya Wellawatta to Kosgoda River Mouth

Reservation Area -10m

Restricted Area - 25m

Total set back - 35m

b). Requested setback from PVL to the structure – 20m

However according to the CZMP; Permissible uses in the Restricted (soft) Area is set out as follows under paragraph 6.5.

“It is good management practice to leave the restricted area free from any development activity. However given prevailing land use patterns, small land parcel sizes and socioeconomic considerations involving some coastal residents a less rigid management strategy may be required. Thus, construction of dwellings only will be permitted in the restricted area, but not commercial structures of any kind. Such dwelling shall however, not restricted access to and along the beach.

The Director of Coastal Conservation may issue a permit for construction of dwelling houses if the following criteria are met;

- The proposed structure will have a floor area less than 750sq. feet (69.7 m²) and will have a roof of tile, asbestos or Cadjan. Concrete slabs are not permitted, and
- The proposed dwelling house will be used solely for residential purposes and not for any form of commercial activities.

In addition to the above, under paragraph 6.6 criteria for Granting Setback Exemptions and Variances had been discussed as follows,

Set back Exemptions

An exemption implies a significant deviation from the intent of the set back guidelines stipulated in this plan. Exemptions will only be granted if public interest (not private) requires it. Exemptions may be granted to engage in restricted activities within the set back area only if and when the applicant has demonstrated that;

1. The proposed activity serves a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests; the activity must be one or more of the following:
 - An activity associated with public infrastructure such as utility, energy, communications and transportation facilities;
 - A water dependent activity that generates substantial economic gain to the community; or,
 - An activity that provides better public access to the shore
2. All reasonable steps will be taken to minimize adverse environmental impact and/or use conflicts; and
3. There are no reasonable alternative locations for serving the compelling public purpose stated.

Such an exemption may be granted by the Director only if the Coast Conversation Advisory Council determines that there are compelling reasons for allowing an exemption and recommends granting it.

When consider the criteria and the set back exemptions discussed above, this court cannot understand the basis under which the 3rd Respondents request was approved in P-21 and development permission was granted by P-23. Failure by the 1st and 2nd Respondents to assist this inquiry has created suspicion on the conduct of the said respondents. The material supplied by the 3rd respondent does not fit in to any of the criteria set out in the CZMP which is now on operation.

However the 3rd Respondent has filed as 3R16 the Certificate of Conformity with regard to the construction, the 3rd Respondent was permitted to construct. In contrary the petitioner by way of an affidavit dated 23rd June 2014 submitted that additional constructions are carried out on the land in question.

In the absence of clear explanation from the 1st and the 2nd Respondents, who are public officers entrusted with the implementation of CZMP as to how the set back exemptions are granted to the 3rd Respondent this court considers that it is the duty of this court to stop any further construction being carried out, outside the Certificate of Conformity.

In these circumstances court decides to issue an interim order as prayed by the petition in prayer (a) of the petition, subject to following conditions,

- a. 3rd Respondent is not permitted to carry out any further construction/ development work until the final determination of this case
- b. If the 3rd Respondent has already obtained the Certificate of Conformity for the construction in question, he is permitted to carry on with business he is permitted to do until the final determination of this case

PRESIDENT OF THE COURT OF APPEAL

H.C.I. Madawala,

I agree,

JUDGE OF THE COURT OF APPEAL