

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

In the matter of an application for  
Orders in the nature of Writs of  
Certiorari & Mandamus in terms of  
Article 140 of the Constitution of  
the Democratic Socialist Republic  
of Sri Lanka.

**Writ Application  
No. C A. 2084/2004**

The Ampara Multi Purpose  
Co-operative Society Limited,  
D.S. Senanayake Veediya,  
Ampara.

**Petitioner**

**VS.**

1. H.M. Herath Abeyweera,  
District Secretary,  
District Secretariat,  
Ampara.
2. B.M.M.M. Basnayake,  
Divisional Secretary,  
Divisional Secretariat,  
Ampara.
3. L.S.C. Siriwardene,  
No. 40, Samanbedda,  
Palam Kadavura,  
Uhana.

4. The Commissioner of Lands,  
Land Commissioner's Department,  
Colombo.
5. Illan Gamage Piyadasa of  
D/675, Pandukabhaya Mawatha,  
Ampara.
- 5A. Madura Illan Gamage  
of 28, Pandukabhaya Mawatha,  
Ampara.
6. Sunil Kannangara,  
District Secretary,  
District Secretariat,  
Ampara.

### **Respondents**

**BEFORE** : **W.M.M. Malinie Gunaratne, J.**

**COUNSEL** : Ronald Perera P.C. with Chandimal Mendis and  
Akila Amunugama  
for the Petitioner

Euresha Fernando, S.S.C.  
for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents

Kuvera de Soysa P.C. with Thusitha Nanayakkara  
for the 5<sup>th</sup> Respondent.

Argued on : 22.01.2015

Petitioner's Written submissions  
filed on : 09.06.2015

1<sup>st</sup>, 2<sup>nd</sup> 4 and 6<sup>th</sup> Respondents

Written submissions

filed on : 12.06.2015

5<sup>th</sup> Respondents Written submissions

filed on : 07.07.2015.

Decided on : 31.05.2016

**Malinie Gunaratne, J.**

The Petitioner in this case has sought an order in the nature of Writ of Certiorari, quashing the decision of the 3<sup>rd</sup> Respondent dated 10.04.2003 contained in “P 16” whereby granting the possession in respect of the corpus which is the subject matter of this proceedings and quashing the decision of the 2<sup>nd</sup> Respondent dated 07.09.2004 contained in “P 17” whereby decided to grant the entire portion of 24 perches to the 5<sup>th</sup> Respondent and a Writ of Mandamus directing the 1<sup>st</sup> and / or 2<sup>nd</sup> and / or 4<sup>th</sup> Respondent to issue a permit under the State Lands Ordinance in favour of the Petitioner.

The facts as tersely stated in the Petition are as follows:

The Petitioner is the Ampara Multi Purpose Co-operative Society Ltd. and the successor in law to the rights and obligations of the Gal Oya Valley Multi Purpose Co-operative Societies Union Limited in the Ampara District. The said Gal Oya Valley Multi Purpose Co-operative Societies Union Ltd; was registered under the provisions of the Co-operative Societies Ordinance and encompassed all Co-operative Societies in the Gal Oya Valley.

It is averred by the Petitioner, with the promulgation of the Co-operative Societies (Special Provision) Act No. 35 of 1970 and in terms of the re-organisation provided therein, five Multi Purpose Co-operative Societies were established in the area of operation of the said Union. These were:

- (i) Ampara M P C S (Petitioner);
- (ii) Gal Oya Meda Palatha M P C S;
- (iii) Weeragoda M P C S;
- (iv) Uda Palatha M P C S;
- (v) Inginiyagala M P C S.

Further it is averred by the Petitioner, that a liquidator was appointed in terms of the said Act No. 35 of 1970 to supervise the dissolution of the said Gal Oya Valley Multi Purpose Co-operative Societies Union Ltd. The said liquidator arranged for the distribution of the assets of the said Union and transfer to the five new Multi Purpose Co-operative Societies in an equitable manner. All properties belonging to the Gal Oya Valley Multi Purpose Co-operative Societies Union Limited within the Town limits of Ampara were transferred to the Petitioner.

The River Valley Board, leased the land which is described in Paragraph 7 of the Petition, to the Gal Oya Valley Multi Purpose Co-operative Societies Limited by indenture of Lease dated 07.10.1969.

It is alleged by the Petitioner, that on or about 23.08.1969, the 5<sup>th</sup> Respondent (presently deceased) and his brother one Illan Gamage Premadasa, wrongfully and illegally entered the said land and dispossessed

the predecessor of the Petitioner. On or about 16.10.1969, the Gal Oya Multi Purpose Societies Union instituted an action in the District Court of Kalmunai seeking to eject the 5<sup>th</sup> Respondent (deceased) and his brother from the said land. After trial, the Judgement of the said action was delivered in its favour ("P 3"). An Appeal was made to the Supreme Court but the said appeal was dismissed.

It is averred by the Petitioner accordingly, the said Gal Oya Multi Purpose Societies Union became lawfully entitled to the possession of the said land and the Petitioner was assigned to the rights of the said land by the liquidator. (The letter is marked as "P 5").

It is alleged by the Petitioner that the 5<sup>th</sup> Respondent (deceased) forcibly and illegally entered the said land on or about 04.03.1997 and attempted to carry out unauthorised constructions. Later the Petitioner became aware that by a permit, ("P 8 a") 17.06 perches had been given to the 5<sup>th</sup> Respondent (deceased). The Petitioner complained to the Divisional Secretary at the time who informed the Petitioner by letter dated 12.03.1997 (Marked "P 8"), that inadvertently 17 perches had been given to the 5<sup>th</sup> Respondent (deceased) in 1982 upon an annual permit (Marked "P 8a")

Thereafter the Petitioner filed a Writ Application in this Court bearing No. 488/97, praying *inter alia*, for a Writ of Certiorari to quash the permit issued to the 5<sup>th</sup> Respondent (deceased) and for a Writ of Mandamus compelling the 1<sup>st</sup> Respondent to issue an annual permit for the said land to the Petitioner.

While this matter was pending the Divisional Secretary of Ampara by his letter dated 05.07.1997 ("P 10") informed the 5<sup>th</sup> Respondent (deceased)

to stop all constructions and development on the said land. The 5<sup>th</sup> Respondent (deceased) filed a Writ Application bearing No. 213/97 praying, *inter alia* for a Writ of Certiorari to quash the said Order of the Divisional Secretary. The matters were settled after parties agreeing to make representation before the 2<sup>nd</sup> Respondent.

The Divisional Secretary after due inquiry made an order ("P 12") that the said allotment of land should be given to the Petitioner and the 5<sup>th</sup> Respondent (deceased) be given an alternative land.

Once again the 5<sup>th</sup> Respondent (deceased) filed a Writ Application No. 781/2000, praying *inter alia*, to quash the said Order of the Divisional Secretary. The Court made an Order ("P 14") directing the 3<sup>rd</sup> Respondent to hold a fresh inquiry with regard to the dispute of the parties. The 3<sup>rd</sup> Respondent had made an Order ("P 16") dated 10.04.2003 granting the possession of the said land to the 5<sup>th</sup> Respondent (deceased).

It is alleged by the Petitioner that the said Order is unreasonable, unlawful, and arbitrary and in violation of the principles of natural justice.

In contesting the above suit by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by way of objections state *inter alia*,

- (i) Consequent to the filing of C A Application No. 781/2000, as both parties agreed to face another inquiry, the Court directed the Divisional Secretary to hold a fresh inquiry.
- (ii) The inquiry was held and it was transpired that the 5<sup>th</sup> Respondent (deceased) was issued a permit (1 R 2) in the year 1982.

- (iii) As it was evident that the Petitioner was never granted a permit or has entered into a lease agreement in respect of the land in question, it was recommended that the 5<sup>th</sup> Respondent (deceased) should be given a permit according to the provisions of Land Development Ordinance.

Further it is stated, for these reasons the Petitioner is not entitled for the reliefs prayed for therein and accordingly the Petition ought to be dismissed.

The 5<sup>th</sup> Respondent (deceased) whilst categorically denying the Petitioner's allegations contended that the Petitioner who has had no right over the land in dispute and who neglected to acquire the rights over this land cannot now complain that the land had been given unlawfully to the 5<sup>th</sup> Respondent (deceased).

It is the stance of the learned President's Counsel for the 5<sup>th</sup> Respondent (deceased), that although the Petitioner relied on documents "P 5", "P 6 (a)" and "P 6 (b)" to prove that this land was assigned to the Petitioner, that "P 5" has been wrongly interpreted by the Petitioner. It is the contention of the learned President's Counsel, even though the liquidator of the Gal Oya Multi Purpose Co-operative Society made requests to the Petitioner repeatedly, to have the lease of the land transferred over to the Petitioner, the Petitioner had not taken any action to do so. "P 5" is the last available document where this request had been made to the Petitioner.

It is the contention of the learned President's Counsel since neither the Petitioner nor the liquidator of the Gal Oya Multi Purpose Co-operative

Society had occupied or developed the said land for a long period of time the 5<sup>th</sup> Respondent (deceased) had been issued a permit.

It is the stance of the learned State Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, that the land in issue was occupied by the Gal Oya Multi Purpose Co-operative Societies Union Ltd., purportedly on the basis of a lease agreement entered into with the River Valley Development Board in 1969, the said Gal Oya Multi Purpose Co-operative Societies Union Ltd. was subsequently dissolved on or about 1971 and the liquidation process was completed on 03.11.1983, along with the said dissolution and any purported lease agreement would also be effectively terminated. As such, it is the contention of the learned State Counsel, the Petitioner does not have any title to the land in dispute, not having entered into a lease agreement or been issued a permit or any other legal authority to be in occupation of the property in issue.

In addition, in the written submissions filed in this Court by the learned State Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents, it was contended that as "P 16" and "P 17" are only findings and not decisions or determinations awarding rights to either party and thereby they are not amenable for the issuance of a Writ of Certiorari. It was further contended that the Petitioner is not entitled to Writ of Mandamus as they have failed to demonstrate any public duty or legal or statutory basis on which a Writ of Mandamus could be sought.

At this juncture it is necessary to draw the attention to the documents marked "P 16" and "P 17". "P 16" is a letter dated 10.04.2003 which had been sent to the Hon. Attorney General by the 3<sup>rd</sup> Respondent, Divisional



Secretary of Ampara. By that letter the 3<sup>rd</sup> Respondent has informed the Hon. Attorney General that outcome of an order by the Court of Appeal (Case No. 781/2000) an inquiry was held by him. The last paragraph of the said letter (“P 16”) reads as follows:

“මේ අනුව පැමිණිලිකරු වන I.G. පියදාස මහතාට, අමිපාර දිසාපතිවරයා විසින් මෙම ඉඩම සඳහා නිකුත් කරන ලද බලපත්‍රය අනුව, මෙම ඉඩම පැමිණිලිකරු වන I.G. පියදාස මහතාට අයත් බවද, 2000 වර්ෂයේ සිට බදු මුදල් අයකර එම බලපත්‍රය I.G. පියදාස මහතාට නිකුත් කළ යුතු බවද ප්‍රකාශ කරමි”

It is only a recommendation that the 5<sup>th</sup> Respondent (deceased) be given a permit according to the Provisions of Land Development Ordinance.

“P 17” is a letter which had been sent to a Deputy Minister of Agriculture, Livestock and Irrigation by the 2<sup>nd</sup> Respondent, Divisional Secretary of Ampara. It is a reply with regard to a letter which had been sent by the Minister’s Private Secretary.

The last Paragraph of the letter (“P 17”) reads as follows:

“එහෙත් ඉඩම මැනුම් කිරීමේදී එම නිලධාරීන්ට ඇති වන ප්‍රායෝගික අපහසුතාවය හා භූමිය පරිභෝජනයේදී ඇති වන ගැටළුව සලකා බලා ඉතිරි ප්‍රමාණය වෙනත් කටයුත්තක් සඳහා වෙන් කළ නොහැකි බව පෙනී යන බැවින් එම මුළු ඉඩම් ප්‍රමාණයම I.G. පියදාස මහතා නමින් මැන වෙන් කිරීමට තීරණය කොට දැනට මැනුම් නියෝග යවා ඇති බව කාරුණිකව දන්වා සිටිමි”

It is relevant to note that it would be the decision, which is mentioned in “P 17” that is amenable for the issuance of a Writ of Certiorari. It is relevant to note that the said decision has not been submitted with the Petition. “P 16” is also, only a letter / declaration, which cannot be

considered as any kind of decision and it is not amenable for the issuance of a Writ of Certiorari.

Hence, in the premises aforesaid I have no difficulty in upholding the contention of the learned State Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents that the application of the Petitioner is misconceived in law.

Without prejudice to the above decision it is significant to note that, this is the 4<sup>th</sup> case filed in this Court with regard to the land in dispute. The learned State Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents submitted that the matter that is re-agitated before this Court is clearly *Res Judicata* and accordingly, the Petitioner cannot maintain this application.

It is to be noted that "P 16" is an outcome of an Order of this Court (Case No. 781/2000). The Petitioner filed Case No. 488/97 seeking to quash "P 9" and for a Writ of Mandamus compelling the 1<sup>st</sup> Respondent to issue a permit to the Petitioner in respect of the said land. The 5<sup>th</sup> Respondent (deceased) also filed a Writ Application seeking to quash the order "P 10" made by the 2<sup>nd</sup> Respondent. The Court of Appeal, at that time ordered a fresh inquiry before the 3<sup>rd</sup> Respondent with consent of all parties. These facts are admitted by the Petitioner too.

It is the stance of the learned State Counsel that, the final inquiry report ("P 16") is an outcome of an Order of this Court and hence meets the criteria for consideration in the context of *Res Judicata* and that the party concerned has been vexed several times by the institution of successive applications.

The learned State Counsel in support of the above submissions referred to the Case of Nandawathie and Others vs. Tikiri Banda Mudalali,

(2003) 2 SLR 247. It was held in that case, that the principle of *res judicata* to apply, the second action must be -

- (a) Between the same parties;
- (b) same subject matter; and
- (c) same cause of action.

It is the contention of the learned State Counsel that, the instant case meets all of the aforesaid criteria and the matter is *res judicata* and cannot be re-debated once again disputing the findings of a functionary made after an inquiry held pursuant to an Order of Court.

It is trite law that the doctrine of *res judicata* precludes fresh proceedings where there is a previous judicial decision on the same cause between the same parties.

As the learned State Counsel has contended if the Court does not apply the principle of *res judicata*, there will be no end to litigation.

It is in the public interest that there should be an end to litigation. (*Interest reipubiicae ut sit finis litium.*)

Hence, according to the facts of this case, the view of the Court is, the principle of *res judicate* should apply in the instant case also.

At this juncture it is significant to note although this case has been filed in 2004 argument was taken up in 2015. As such, it has taken twelve years to conclude this case.

The next issue that should be considered is as to whether the Petitioner has any rights over the land in dispute.

In Paragraph (12) of the Petition it is stated that the Petitioner was assigned to the rights of the land by letter dated 13.11.1979 ("P 5"), by the liquidator and the Petitioner was in possession of the said land and has paid taxes and rates in respect of the said land to the Ampara Urban Council.

It is the stance of the learned President's Council for the 5<sup>th</sup> Respondent (deceased) that even through the liquidator made repeated requests to the Petitioner to have the lease of the said land transferred over to the Petitioner, the Petitioner has not taken any action to do so. Even though the Petitioner claims the rights of the land on document "P 5", it is necessary to draw the attention to the said document. It is mentioned in "P 5" as follows:

ඉහත බිම් කොටස ඔබ සමිතියට අත්පත් කර ගන්නා ලෙස මවිසින් කිහිප වරක්ම ලිඛිතව දැනුම් දී ඇත. එබැවින් සමුපකාර සංවර්ධන උප කොමසාරිස්ගේ පූර්ව අනුමැතිය ලබාගෙන මෙම බිම සමිතිය නමට පවරා ගන්නා ලෙස මෙයින් දන්වමි.

On examining the document "P 5" it would thus be seen, although by that letter, the Liquidator has requested to have the lease of the land transferred, the Petitioner has not taken any steps to do so.

The Petitioner has not submitted any document to the effect that the land in dispute was acquired by them. The Petitioner has wrongly interpreted the document "P 5". It is relevant to note that the duration of the lease has expired in 1987 and as such, I am of the view, that the Petitioner has no rights whatsoever in respect of the land.

In the case of *Biso Menika Vs. C.R. De Alwis* (S.C. 59/61) Sharvananda J. (as he was then) stated, "a Writ of Certiorari is issued at the

discretion of Court. It cannot be held to be a Writ of right or one issued as a matter of course”.

Halsbury, Volume 2 Pages 85 and 86, Simonds Edition: - “The grant of a writ is as a general rule, a matter of discretion of the Court. It is not an order granted as of a right and it is not issued as a matter of Course”. Accordingly, the Court may refuse the order, not only upon the merits but also by reason of the special circumstances of the case.

It is relevant to note, that the facts emerged in this case do not show that the documents “P 16” and “P 17” are amenable for the issuance of a Writ of Certiorari.

In the given circumstances, the Petitioner is not entitled to seek a Writ of Certiorari to quash the recommendation contained in documents marked “P 16” and “P 17”. As such the Petitioner is also not entitled to the Writ of Mandamus as prayed for in the Petition.

Accordingly application is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

Application is dismissed with costs.