

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

In the matter of an application under and in terms
of Article 140 of the Constitution of Sri Lanka for a
mandate in the nature of Writs of Certiorari and
Prohibition

Herath Mudiyansele
Kapuru Menika.

"Sirisevana", Welapahala,
Meewallawa, Nikaweratiya.

Petitioner

Vs.

C.A.Application No: 294/2007

- 1 The Land Commissioner General,
Land Commissioner General's Department,
No. 7 Gregory's Avenue, Colombo 07.
- 2 The Divisional Secretary of Kotawehera,
Divisional Secretariat.
Kotawehera.
- 3 Provincial land Commissioner (North
Western Province)
Provincial Land Commissioner's Office,
(N.W.P), Kurunegala.
- 4 Ven. Mahamithawa Ayupala,
The Viharadhipathi,
Sri Shailatharamaya, Meewellawa.
- 5 Ven. E. Vijithapala,
C/O Sri Shailatharamaya,
Meewellewa.

Respondents

BEFORE : L.U Jayasuriya J.
Deepali Wijesundera J.

COUNSEL : Nilshantha Sirimanne for the Petitioner
Janak De Silva D.S.G for the Respondents

ARGUED ON : 17th May, 2016

DECIDED ON : 6th September, 2016

L.U Jayasuriya J.

(1) The Petitioner invoked the writ jurisdiction of this Court vested under and in terms of Article 140 of the Constitution seeking a Writ of Certiorari to quash the decision made by the 2nd Respondent by which he cancelled the permit marked p16 issued to the Petitioner amongst the other reliefs.

(2) Counsel for the Petitioner and 1st to 3rd Respondents agreed that the judgment of this application would apply to case no. C.A(writ) application 295/2007.

(3) The Petitioner submitted that the Petitioner's father, one Punchirala cultivated paddy in an extent of land consisting about two acres since 1954 as evidenced by document produced marked p2. Subsequently four permits were issued to the siblings of the said Punchirala. The Petitioner's permit consisting of two roods was produced marked P1 dated 1/12/1992. On a perusal of p2 it appears that the same was issued under and in terms of Crown Lands Ordinance No.08 of 1847 to occupy the land described in the said permit for a period of one year valid till 31.12.1982.

(4) The Petitioner has not submitted any permit issued to said Punchirala under and in terms of the Land Development Ordinance and therefore this court has to draw the inference that Punchirala was never issued with a permit under and in terms of the Land Development Ordinance. The Petitioner contended that the 4th and 5th Respondents attempted on several occasions to take over the Petitioner's land as evidenced by documents produced marked p3(a), p4, p5, p6, p7, p8(b), p8(1), p9 & p10. This court is of the view that attempts made by the 4th & 5th respondents cannot be attributed to the government.

(5) This Court has to examine as to whether the Petitioner has fulfilled the conditions set out in the permit marked p1 independent from the conduct of the 4th Respondent or his agents

to take over the Petitioner's land. The learned D.S.G drew the attention of this court to clause 8 of the said permit and submitted that the permit holder must "Cultivate & Develop" the land to the satisfaction of the Divisional Secretary and further submitted that the Petitioner has failed to act in accordance of the said condition. Therefore a notice under s106 of the said ordinance was issued to the Petitioner.

(6) Pursuant to the notice marked p13 an inquiry was held on 15.11.2006. At the inquiry the Petitioner has admitted that the land in issue was not fertile at that point of time and that she did not cultivate the land in issue for a long time. Further, under paras 17, 18, 20 and 25, the Petitioner has admitted in her Petition that she did not cultivate and develop the land in issue.

(7) At this stage, it is important to peruse the document marked p5 dated 10.02.1992, which was written before the permit marked p1 was issued. p5 is a letter written to officer-in-charge of Nikaweratiya Police by one of the siblings of Punchirala that the land called Siyambalagaha Hena was leveled and that the agricultural crops and the agricultural reservoir was destroyed to build a car park by the 4th Respondent. It is apparent from p5 that the land was infertile by the time p1 was issued.

(8) On a perusal of 2R2 dated 07.07.2006, it is apparent that the same was issued to the Field Officer to conduct a site inspection on a request made by the Petitioner to issue a deed. This position was further strengthened by the letter produced marked P8(b) dated 28.06.2006 wherein the petitioner had sought to survey the land and have a grant issued. Subsequent to which the Field Officer's report dated 04.08.2006 states that no development has taken place in the land in issue. This is a valid reason to cancel a permit in the eyes of this court.

(9) The argument advanced by the Petitioner's Counsel is that the 2nd Respondent,

- (i) Acted under dictation.
- (ii) Abdicated his authority.
- (iii) Has not given valid reasons.
- (iv) Has not analyzed the evidence adduced at the inquiry.

(10) None of these grounds will hold water as the decision of the 1st Respondent appears to have been made conforming to the procedure stipulated under s.106 of the Land Development Ordinance on an application made by the Petitioner subject to a fair hearing. Moreover, it is evident that the Petitioner was represented by a lawyer at the said inquiry. This shows that the Divisional Secretary has acted judiciously and finds himself well within his authority in his actions in the interest of this particular case.

(11) It was held in **Needra Fernando Vs Ceylon Tourist Board and Others (2002) 2 Sri.L.R 169** that: **“The rule against bias is a doctrine which requires that no man should be the judge in his own cause. The petitioner had a right to a fair hearing. The inquiring officer must appear to be free from bias, which is a concomitant of that right. It is true that the Chairman had not personally decided the matter, but he had appointed the inquiring officer who did make the decision or the recommendation. Bias being insidious, one rarely has to or is able to prove actual bias. I think appearances are everything, justice must be seen to be done.”**

(12) In the above mentioned case the 1st Respondent appointed the 3rd Respondent to conduct a disciplinary inquiry against the Petitioner. In the case in hand however the 2nd Respondent himself has conducted the inquiry as evidenced by the document marked 2R9. When the Petitioner admits that the land in issue is infertile and cannot be developed there is no requirement on the part of the 2nd Respondent to analyze the evidence or give reason as it stands against the basic requisites of the Land Development ordinance, the preamble to which envisages that lands alienated under permit ought to be developed and cultivated. Therefore this court is of the view that the Divisional Secretary has acted accordingly to the provisions of law and further stipulations he finds himself called upon to discharge.

(13) For the foregoing reasons, I hold that the impugned decision is not Ultra Vires and I see no reason to interfere with the same. Accordingly, the application is dismissed with costs fixed at Rupees 25,000.00

(14) This judgment applies to C.A(writ) application 295/2007 as well.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL