

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

**In the matter of an Application for a mandate  
in the nature of *Writ of Certiorari and  
Prohibition* under article 140 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka**

1. Mohamed Riyal Mohamed Rizan,  
No. 164, Galle Road,  
Mount Lavinia.
2. Osborne Lanka (Private) Limited,  
No. 26, Bodhirukkarama Mw,  
Wellawatta,  
Colombo 06.
3. Perpetual Investments Lanka (Private) Limited,  
No. 219, Stanley Thilakarathne Mw,  
Nugegoda.

**PETITIONERS**

**CA/WRIT/316/2016**

**Vs,**

1. Chandrani Samarakone,  
The Commissioner of Local,  
Government- Western Province,  
No. 02, Cambridge Place,  
Colombo 07.

2. Vithana Kuruppuarachchige Anura,  
The Municipal Commissioner,  
Colombo Municipal Council,  
Town Hall,  
Colombo 07.
3. The Colombo Municipal Council,  
Town Hall,  
Colombo 07.

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA) &  
S. Thurairaja PC J**

**Counsel:** Manohara de. Silva PC with Arinda Wijesurendra and Anusha Perusinghe  
for the Petitioners  
  
Romesh de. Silva PC with Ranil Samarasooriya and Didula Rajapaksha  
for the Respondents

Supported On: 12.10.2016

**Order On: 18.10.2016**

## Order

### **Vijith K. Malalgoda PC J**

Petitioners to the present application namely Mohomad Riyal Mohomed Rizan, Osborn Lanka (Private) Limited and Perpetual Investment Lanka (Private) Limited have come before this court seeking inter alia,

- b) Grant and issue a mandate in the nature of a writ of *Certiorari* to quash the decision of the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent and/or any one or more of them to serve the 1<sup>st</sup> Petitioner with the notice to quit dated 23.08.2016 marked P-23 above.
- c) Grant and issue a mandate in the nature of a writ of *Certiorari* to quash the purported notice to quit dated 23.08.2016 served on the 1<sup>st</sup> Petitioner marked P-23.
- d) Grant and issue a mandate in the nature of a writ of *Prohibition* preventing the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and/or any one or more of them from taking any steps under the provisions of the State Lands (Recovery of Possession) Act as amended and/or any other law against the Petitioners in respect of the land set out in the notice to quit dated 23.10.2016 marked P-23.
- e) Grant and issue a mandate in the nature of a writ of *Prohibition* preventing the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and/or any one or more of them from taking possession of the subject matter of this application, i.e. the land set out in the notice to quit dated 23.10.2016 marked P-23.

And two interim orders,

- f) Preventing the 1<sup>st</sup> Respondent and/or 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and/or any one or more of them taking any steps under the provisions of the State Lands (Recovery of Possession)

Act as amended against the Petitioners in respect of the land set out in the notice to quit dated 23.08.2016 marked P-23 until the final hearing and determination of this application.

- g) Staying the operation of the notice to quit date 23.08.2016 marked P-23 until the final hearing and determination of this application.

As observed by this court the Petitioners have come before this court complaining that the Notice to quit dated 23.08.2016 issued by the 1<sup>st</sup> Respondent was made mala fide, capricious, arbitrary, irrational, illegal, unlawful and unreasonable.

As revealed before this court the land referred to the said impugned document produced marked P-23 before this court refers to a land bearing No. 43 Barnes Place, Colombo 7 which is three roods and 37.23 perches in extent.

According to the Petitioners, they claim title to the said land, through their predecessors in title and in support of this position the Petitioners have produced marked P-10, P-13 and P-15 three pedigrees setting out the title.

As revealed before this court the 1<sup>st</sup> Petitioner had purchased the land and premises depicted as lot 1 in plan 9558 dated 10<sup>th</sup> April 2013 from one Mohomad Thahir Mohomad Sheerzy on 05.10.2013 for the price of Rs. one hundred and twenty five million.

According to the schedule to the said Deed of Transfer No. 1799 which is produced marked P-3, the extent of the said land purchased by the Petitioner was three roods and thirty seven decimal two three perches (A0-R3-P37.32).

In the said deed the said vendor Mohomad Thahir Mahmood Sheerzy had explained his title to the said premises as follows;

“Where as the said vendor vide Declaration of Amalgamation No. 1622 dated 12<sup>th</sup> April 2013 attested by the Notary Attesting these presents is seized and possessed of and is the **owner of the land and premises depicted as lot 1 in plan 9558 dated 18<sup>th</sup> April 2013** made by Gamini B Dodanwala Licensed Surveyor and morefully described in the schedule here to.”(Emphasis added)

It is further revealed that the second Petitioner to the present application had acquired an undivided 640/15360 shares (subject to a maximum of 10 perches) of the vendors rights and interest in the said land bearing No 43 Barnes Place, Colombo 7 from Ratnaweera Arachchige Ranjith Illangarathne Rabel on 25<sup>th</sup> July 2014 for sum of Rs. Twelve million eight hundred and sixty thousand.

The third Petitioner to the present application had acquired an 1125/30720 shares (5.65 perches) of the vendors rights and interest in the said land bearing No 43 Barnes Place, Colombo 7 from Mohomad Farouk Abdeen on 16<sup>th</sup> October 2015 for sum of Rs. eleven million three hundred thousand.

During the submissions before this court the above named Petitioners have admitted that, the land and premises referred to this case No. 43 Barnes Place, Colombo 7 was vested with the third Respondent Colombo Municipal Council on 7<sup>th</sup> October 1974 by its certificate of purchase for nonpayment of rates.

The Petitioners further took up the position that, the said 3<sup>rd</sup> Respondent has passed a resolution on 26<sup>th</sup> February 1985 to the effect that,

“It was revealed at the discussion that the council has no intention of holding on to this property as the buildings thereon are occupied by about 27 families and the property was

vested for nonpayment of rates. The owners have appealed to give the property back to them on humanitarian grounds.”

and thereafter wrote to its claimants on 11<sup>th</sup> September that,

1. Council had recommended that the council give this property back to the rightful owners after recovery of the dues to the council with warrant cost and Ministry approval.
2. Respective claims will have to be established through courts in view of contradictory nature of the claims.

As revealed before this court, the said claimants had thereafter gone before the District Court in order to establish their rights and the District Judge of Colombo by his Judgment dated 27.01.2005 had decided the claims of two Petitioners and the 27 Respondents who took part in the said action before the District Court.

It was further revealed before this court, that the said claimants had thereafter requested the 3<sup>rd</sup> Respondent to divest the land with them but the Petitioners could not establish before us, any meaningful step taken by the 3<sup>rd</sup> Respondent to divest the said land and premises with the said claimants.

As observed above, the decision which was conveyed by letter dated 11<sup>th</sup> September had two conditions in order to divest the land in question namely,

1. Recovery of dues with warrant cost
2. Ministry approval

Even though the Petitioners submitted that their predecessors in title had paid all rates which was due but could not submit whether the other requirements, namely the recovery of warrant cost and Ministry approval had been obtained to divest the land.

It was further revealed before this court that the 1<sup>st</sup> Petitioner's predecessor in title had gone before the District Court of Colombo in December 1985 making the 3<sup>rd</sup> Respondent and several others including the predecessors in title to the other Petitioners before this court as Respondents seeking an order against the 3<sup>rd</sup> Respondent to transfer No. 43 Barnes Place, Colombo 7 in the name of the said Petitioner, but the said action was dismissed by the District Court. Being dissatisfied by the said decision of the Additional District Judge Colombo, an appeal was lodged before this court and the said appeal bearing No. CA. 68/88 (Final) was also dismissed by this Court on 09.01.1995.

The Learned President's Counsel who represented the petitioners above named was heavily dependent on legitimate expectation of the Petitioners above named when they have acquired the title for voluble consideration in respect of the whole and/or part there of the subject matter to the present application as referred to above and argued that the decision of the 3<sup>rd</sup> Respondent to act under the provisions of the State Land Recovery of Possession Act No. 7 of 1979 as amended was made "mala fide, capricious, arbitrary, irrational, illegal, unlawful, unreasonable and ultra virus the provisions of the State Land Recovery of Possession Act and the Municipal Council Ordinance. In this regard the Petitioner took up the position that when the 3<sup>rd</sup> Respondent wrote to the predecessors in title in the year 1985 that,

- i. Council had recommended that this property be given back to the rightful owners
- ii. Respective claims will have to be established through courts

and based on the above request, when the Petitioners predecessors in title obtain a court order from the District Court of Colombo determining the claims of them, the Petitioner's predecessors in title had entertained an expectation which was legitimate mainly for the reason that there was a promise given by the Public Authority, i.e. the 3<sup>rd</sup> Respondent.

However in this regard we are mindful of the fact that the promise referred to above was given subject to several conditions.

When considering the material placed before this court by both parties it is observed by this court that,

- a) The Land and premises referred to this case, No. 43 Barnes Place, Colombo 7 was vested with the 3<sup>rd</sup> Respondent on 7<sup>th</sup> October 1974 by its certificate of nonpayment of rates.
- b) The 3<sup>rd</sup> Respondent by letter dated 11<sup>th</sup> September 1985 had informed its claimants that the council had recommended to give the property back to the rightful owners on recovery of all dues with warrant cost and Ministry approval
- c) The Petitioner failed to satisfy this court that conditions to warrant tax and obtaining Ministry approval are fulfilled when the Petitioner come before this court
- d) The predecessor in title to the 1<sup>st</sup> Petitioner had gone before the District Court seeking an order against the 3<sup>rd</sup> Respondent to transfer the land and premises in No. 43 Barnes Place, Colombo 7 in his name whilst making several others including the predecessors in title of the other two Petitioners but the said action was dismissed by the District Court and the Appeal lodged against the said decision too was dismissed by this court in the year 1995 and no appeal was preferred to the Supreme Court against the said decision
- e) 1<sup>st</sup> Petitioner's predecessor in title, and the vendor in deed 1799 which is produced marked P-3 who is also the plaintiff in the District Court of Colombo 14479/L claimed his title as,

“said vendor vide Declaration of Amalgamation No. 1622 dated 12<sup>th</sup> April 2013 attested by the Notary attesting these presents is seized and possessed of and is the legal owner of the land and premises depicted as lot 1 in plan No 9558.....”

When he was well aware that,



- i. When he filed action in the District Court of Colombo seeking an order against the 3<sup>rd</sup> Respondent to transfer the land and premises in No 43 Barnes Place Colombo 7 and the said action had been dismissed by the District Court and the appeal there to was also dismissed by the Court of Appeal
  - ii. The District Court in the case of 15002L had decided the claims between two Petitioners and 27 Respondents who took part in the said proceedings
- f) Both the vendors in P-11 and P-14 have only sold their rights and interest of the said land when they were well aware
- i. That the land and premises in No 43 Barnes Place, Colombo 7 was vested with the 3<sup>rd</sup> Respondent on 7<sup>th</sup> October 1974 by its certificate of purchase for nonpayment of rates
  - ii. The 3<sup>rd</sup> Respondent Council had recommended to give to the property back subject to conditions,
    - a. Payment of rates in arrears
    - b. Payment of warrant tax
    - c. Ministry approvaland that the condition (b) and (c) had not been fulfilled
  - iii. That the District Court action which was pending before the District Court of Colombo seeking an order against the 3<sup>rd</sup> Respondent was dismissed by Court.
- g) The 1<sup>st</sup> Petitioner had purchased lot 1 in plan 9558 which is in the extent of three roods and thirty seven decimal two three perches from a vendor who claimed that he is the legal owner of the said land when in fact the legal owner of the said land was the 3<sup>rd</sup> Respondent when the said transaction had taken place on 10.04.2013.

Learned Counsel for the petitioners relied on several decision of this court as well as from the Supreme Court in support of his case but we see no relevance of the said cases to the present case before us.

When considering the material discussed above we see no merit in the application before us to issue notice in the 1<sup>st</sup> instance and grant any interim relief as prayed by the Petitioners.

This application is accordingly dismissed.

**PRESIDENT OF THE COURT OF APPEAL**

**S. THURAIRAJA PC J**

**I agree,**

**JUDGE OF THE COURT OF APPEAL**