

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

*In the matter of an Application for
mandates in the nature of writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 110/ 2013

Yakupitiyage Gamini Wijewardana,

No. 2/32,

Eliyagedara Watta,

Batewela,

Ranala.

PETITIONER

-Vs-

1. Kaduwela Municipal Council,
Kaduwela.
2. Gamini Gunasekara,
Kaduwela Municipal Council,
Kaduwela.
3. Hon. Attorney General,
Attorney Generals Department,
Colombo 12.

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Thilak Wijesinghe for the Petitioner,

Ananda Kasthuriarachchi with Udenika Abeyesiriwardena for the
1st & 2nd Respondents,

Chaya Sri Nammuni SC for the 3rd Respondent.

Decided on: 2016-10-18

P Padman Surasena J

Learned counsel for the Petitioner as well as the learned Counsel for the 1st & 2nd Respondents when this case came up on 2016-07-25, requested this Court, to pronounce the judgment after considering the written submissions the parties have filed. They further informed court that as this case is straight forward in its nature, it would not be necessary for them to make oral submissions. Therefore this judgment would be based on the material that have been adduced by parties in their written submissions.

Petitioner in this case is seeking a writ of Mandamus directing the 1st and/ or the 2nd Respondent to allocate him a shop in the new shopping complex in the bus stand in Kaduwela. He insists that allocation of a shop to him must be done before calling for tenders as the Chairman of Kaduwela Pradeshiya Sabha has agreed to do so as per clause 8 of the document marked and produced as **X 4**. He claims to have a legitimate expectation for such an allocation on this document.

The Petitioner seeks from this court inter alia following reliefs.

- i. a writ of Certiorari quashing and /or revoking and/or canceling and/ or annulling the tender notice which appears in the "Deyayena" news paper dated 2013-04-12 or any other public notice to that effect,

- ii. a writ of Mandamus directing the 1st Respondent and/ or the 2nd Respondent to allocate a shop in the new shopping complex in the Bus Stand in Kaduwela to the Petitioner, before calling for tenders to lease out the shops in the new shopping complex in the Bus Stand in Kaduwela,

It is the position of the 1st and 2nd Respondents

- I. that the 1st & 2nd Respondents are not constructing a shopping complex but a bus stand Jointly with the Western Province Road Passenger Transport Authority,
- II. that the 1st Respondent is a lessee of the said Western Province Road Passenger Transport Authority in terms of the lease agreement dated 1999-11-19,
- III. that the documents marked **X 1** to **X 3** have been issued prior to the date of signing the said lease agreement,
- IV. that the document marked **X 4** is a document to give preference at a tender,
- V. that the Petitioner had never paid assessment tax and was never in legal occupation as a tenant of the 1st Respondent,
- VI. that the Petitioner has no right or cannot have a legitimate expectation as the Petitioner is a trespasser,
- VII. that the 1st Respondent is bound to call tenders according to law and no shops can be allocated without a tender procedure,

- VIII. that the document marked **X 4** was only to give preference amongst the tenderors,
- IX. that the document marked **X 10** does not state that the Petitioner will be allocated a shop in the new complex,
- X. that the tenders were called for, but the Petitioner failed to submit a tender and as such the Petitioner has no legal right to maintain the present action.

Further it is the position of the 1st and 2nd Respondents that they never gave an undertaking to the Petitioner to allocate a shop without his coming forward to tender and without any payment being made in that regard. In any event the 1st Respondent cannot in law allocate a shop to a trespasser at the expense of public funds contrary to the accepted procedure.

It appears that no consideration has been paid by the Petitioner in respect of the document marked **X 4**. Thus there is no legal duty cast on the Respondents to allocate a shop to the Petitioner in the said bus stand free of charge.

The document marked **X 4** is a contractual agreement between the Chairman of the Kaduwela Pradeshiya Sabha and the Petitioner and stands as a commercial transaction between them. 1st and 2nd Respondents have no involvement in that agreement. Therefore this application is misconceived in law.

The said bus stand project is owned by the Western Province Peoples' Transportation Authority and the Respondents handle only its implementation.

In any case this Court cannot stop the 1st and 2nd Respondents from calling for tenders in order to compel them to allocate a shop to the Petitioner outside such tender procedure. Such a move would amount to a breach of law and all norms that the legal system of this country is endeavoring to uphold.

In these circumstances and for the foregoing reasons we see no merits in this case. Therefore we decide to refuse this application. This application should therefore stand dismissed with costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL