

**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 Writ of *Certiorari*, *Prohibition* and
Mandamus under and in terms of Article 140 of the
Constitution of The Democratic Socialist Republic
of Sri Lanka**

Thumpele Gedara Don Antony Wijeratne of
No. 14, Moragolla Junction,
Nuwara Eliya Road,
Gampola.

Petitioner

CA/ WRIT/383/2014

Vs,

1. U.P. Indika Anuruddha Piyadasa,
The Divisional Secretary,
Udawalatha,
Gampola.
2. The Commissioner General of Lands,
The Department of Land Commissioner,
1200/6, Rajamalwatta Road,
Battaramulla.
3. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

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

Counsel : Sunil Abeyratne for the Petitioner,
Nayomi Kahavita, SC for the Respondents

Argued On: 06.05.2016

Written Submission On: 15.07.2016

Order On: **04.11.2016**

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner to the present application Thumpele Gedara Don Anthony Wijeratne has come before this court seeking inter alia,

- b) Set aside the quit notice P-21 by writ of *Certiorari*
- c) Prohibit the 1st Respondent from taking any steps further on P-21 by writ of *Prohibition*
- d) Writ of *Mandamus* directing the Commissioner General of Lands to provide the said Land more fully described in P-12 on the basis of long term lease to the Petitioner without any delay

The Petitioner who was serving in the Sri Lanka Army was in occupation of a state land named Anguwatte within Amunupura Grama Niladhari Division in the Udapalatha Divisional Secretary Division. As revealed from the documentation placed before this court the Grama Niladhari of the said Amunupura Division (No. 1165) had confirmed the residence of the Petitioner at the said premises for a period of 18 years by his letter dated 05.11.1996.

As identified by the Grama Niladhari the four boundaries of the land which was occupied by the Petitioner are namely;

To the North Ormell Estate Road

To the South Road to Kothmale tank

To the East Gampola Kandy Road

To the West Ormell Estate (Private Land)

According to the Petitioner, he has made an application for a permit for the said land to the predecessor of the 1st Respondent on 31.01.1992. Since then the predecessor of the 1st Respondent had taken steps to regularize the request made by the Petitioner and in support of this position the Petitioner has submitted several documents before this court.

As observed by this court on 4th December 1992 the predecessor to the 1st Respondent had written to the Kachcheri Surveyor, Udunuwara to prepare a sketch of the land occupied by the Petitioner, with a copy to the Petitioner and the Grama Niladhari of the area, directing him to assist the survey. (P-3) On 16th February the predecessor of the 1st Respondent had written to the Government Valuer to value the said land, in order to grant a long term lease to the Petitioner, again with copies to the Petitioner and the Grama Niladhari of the area.

After obtaining the necessary documentation, the predecessor to the 1st Respondent by his letter dated 6th July 1993 had submitted the following documents namely,

- a) Two applications in the format
- b) Salary slip
- c) Sketch of the land
- d) Valuation Report
- e) Affidavit in two copies
- f) Two copies of notice prepared under Government Land Regulation 21 (2)

to the Provincial Land Commissioner Kandy (P-6)

The Petitioner has produced several other documents before this court to establish the steps taken by the relevant officials in order to arrange the issuance of the permit to the Petitioner.

As submitted by the Petitioner, by letter dated 29.11.1996 the Provincial Land Commissioner had written a letter to the Chief Engineer Road Development Authority, with regard to the road reservation required for the land in question since one of its boundary faces Gampola- Nuwara Eliya main road. On 25.03.1998 Chief Engineer replied to the said letter, informing that, he has no objection for the rear portion of the said land starting from the house constructed by the Petitioner being given to the Petitioner since there has to be at least 40 feet road reservation at that point.

After receiving the said letter, Deputy Land Commissioner Udapalatha, had written to the surveyor Udapalatha Land Office to prepare a sketch leaving a road reservation of 40 feet on 05.08.1998. Thereafter by letter date 20.06.2002 the predecessor to the 1st Respondent had written to the Kachcheri Surveyor- Gampola, to take steps to handover the land as depicted in the plan attached, to the extent of 27.67 perches (Hectare 0.0700) after showing its boundaries since the relevant assessed taxes had been recovered from the Petitioner. (P-11)

As observed by this court, the plan which was attached to the said letter was the identical sketch prepared earlier but, a 40 feet road reservation had been allowed and therefore the extent had been reduced to 0.0700 Hectare.

Even though the documentation submitted by the Petitioner is very clear with regard to the decision of the 1st Respondent's predecessors and the other relevant officials who took decisions to allocate the land occupied by the Petitioner, a Surveyor General's Plan had been prepared with regard to the same land to confirm the land allocated to the Petitioner on 20.12.2002 and according to the said plan the Petitioner was allocated a land to the same extent (i.e. 0.0700 Hectare) but after allocating

the said land another portion to the extent of 0.0368 Hectare had been left out from the land occupied by the Petitioner.

As revealed before this court, the dispute between the Petitioner and the Respondents had commenced subsequent to the preparation of the Surveyor General's Plan which was produced before this court marked R-3. Petitioner whilst relying on the sketch prepared by the Kachcheri Surveyor on two occasions once at the initial stage and thereafter receiving instructions from the Chief Engineer Road Development Authority, had argued that the decision taken by the Authorities were to give him the entire land occupied by him, after leaving a road reservation and the subsequent plan was prepared with an ulterior motive to give a portion of his land to another person.

However as against the said argument raised by the Petitioner the Respondents took up the position that the decision taken by the Authorities was to grant 0.0700 Hectare to the Petitioner and therefore he is not entitled to claim the balance 0.0368 Hectare in the said land.

Based on the above conclusion that the Petitioner was only allocated lot 1.109 in plan 320164 prepared by the Surveyor General, steps had been taken by the 1st Respondent to evict the Petitioner from lot 1.111 in the same plan by issuing a quit notice which is produced marked P-21 before us.

In addition to the other reliefs claimed before this court Petitioner has sought a writ of *Certiorari* to quash the said quit notice issued to evict him from lot 1.111 of Surveyor General's Plan 320164.

As revealed before us a decision to grant a long term lease of a land in the extent of 0.0700 Hectare was taken by the 1st Respondent's predecessor in June 2002 and the Kachcheri Surveyor had been instructed to show the boundaries and properly hand over the land to the Petitioner. The sketch of the plan which was attached to the said letter had only one block of land after leaving the road reservation as discussed above.

The Surveyor General's representative who went to survey the same land had found 0.0368 Hectare in excess to the land leased to the Petitioner, but he too has referred to the excess portion as, 'garden' under column 'present land use' and under remarks stated "T.G.D.A. Wijeratne resides at Gampola-Nuwa Eliya Road, Moragolla Junction has cultivated- to take suitable action."

The above observation made by the Surveyor General's representative, too confirms the fact that lot 1.111 was also occupied and developed by the Petitioner at the time the plan was prepared.

When considering the submission made by the Learned State Counsel I see no reason to reject the position taken by the state since there is a decision by the predecessor to the 1st Respondent to allocate 0.0700 Hectare to the Petitioner, but what is important to consider at this stage is when reaching the said decision, was he aware of the existence of any excess land which was left to be blocked out separately at that time.

In this regard the Respondents have further argued that there is a dispute between the extent of the land claimed by the Petitioner and the extent of the land granted by the Respondents and that cannot be resolved into by way of a writ application.

In support of this argument the Respondents relied on the decision in the case of *Thajudeen V. Sri Lanka Tea Board 1981 2 SLR 471* to the effect, "where the major facts are in dispute and the legal results of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the court would be better able to judge which version is correct, a writ will not issue"

But I see no relevance of this decision to the case in hand, in the absence of any dispute with regard to the decision taken by the predecessors to the 1st Respondent to allocate the land occupied by the Petitioner leaving only the road reservation out. This fact is well established before this court by documents produced marked P-3, P-4, P-7, P-8, P-9, P-10 and P-11.

In the said circumstance it is understood that there was a clear decision taken by the 1st Respondent's predecessors to grant a long term lease to the land occupied by the Petitioner for nearly 18 years up to 1996 and since then up to year 2002 June when the land was officially handed over to him. The boundaries referred to in P-12 and the boundaries referred to by the Grama Niladhari in the year 1996 are also the same except the road reservation referred to in P-12.

In the said circumstances it is further observed by this court that when the Petitioner was shown the four boundaries and handed over the possession of the land he occupied for nearly 20 years, the Petitioner entertained an expectation, that there is a decision to hand over the entire land occupied by him and the said expectation cannot be simply rejected.

Professor Wade has discussed as to how an expectation can be considered as legitimate as follows;

‘It is not enough that an expectation should exist. It must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may counter veiling consideration of policy or law.

But some points are relatively clear, first of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfill the expectation.’”

(Administrative Law H.W.R. WADE & C.F. FORSYTH 10th Edition page 449)

In the case of *Ram Pravesh Singh V. State of Bihar (2206) 8 SCC 381* use of the Doctrine of legitimate expectation was discussed as follows;

“A legitimate expectation even when made out, does not always entitle the expectant to a relief. Public Interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision maker, may be sufficient to negate the ‘legitimate the expectation.’ The

doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise) can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered in to any transaction or negotiation with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.”

The conduct of the 1st Respondent’s predecessors discussed above clearly demonstrates that the practice they have adopted had given a legitimate expectative to the Petitioner that what was promised by them was the entire land occupied by the petitioner for a period of more than 20 years. In these circumstances this court is of the view that the Petitioner is entitled in law to be considered under the doctrine of Legitimate Expectation to grant the relief he has claimed in the petition before us. I therefore make order.

- a) issuing a writ of *Certiorari* quashing the quit notice marked P-21
- b) Issuing a writ of *Prohibition* prohibiting the 1st Respondent from taking any further steps on P-21
- c) Issuing a writ of *Mandamus* directing the 1st and 2nd Respondent to provide the entire land (except the road reservation) more fully described in P-12 and/or any other plan prepared thereafter on the basis of a long term lease to the Petitioner.

However this court makes no order with regard to cost.

Application allowed.

PRESIDENT OF THE COURT OF APPEAL