

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, Mandamus and Prohibition in
terms of Article 140 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.*

C A (Writ) Application

No. 241 / 2014

Wanasinghe Mudiyansele

Kusumawathi,

Ratnasiri Motors,

514/ A2,

Maithripala Senanayake

Mawatha,

Stage 2,

Anuradhapura.

PETITIONER

-Vs-

1. Divisional Secretary,
Nuwaragam Palatha East,
Nuwaragam Palatha East Divisional
Secretariat,
Anuradhapura.

2. Land Commissioner General,
Land Commissioner General's
Department,
'Mihikatha Medura',
1200/ 6,
Rajamalwatte Road,
Battaramulla.

3. Hon. Minister of Lands and Lands
Development,
'Mihikatha Medura',
1200/ 6,
Rajamalwatte Road,
Battaramulla.

4. Sriyani Premalatha Subathilaka,
'Namal Stores',
Stage 2,
Anuradhapura.

RESPONDENTS

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

P. Padman Surasena J

Counsels : Thisya Weragoda for the Petitioner.

Anusha Fernando DSG for the 1st, 2nd and 3rd

Respondents.

Rohan Gunapala for the 4th Respondent.

Decided on: 2016 - 11 - 28

JUDGMENT**P Padman Surasena J**

Government agent of Anuradhapura has by the document marked and produced as **P 1 (b)** has granted a long term lease of lot 514/ A2 comprising A;0, R;2, P;0 in extent in favour of the Petitioner for an industrial purpose, in terms of the provisions of State Lands Ordinance.

While the above lease (as per **P 1(b)**) remains valid the Provincial Land Commissioner of the North Central Provincial Council, had issued the letter dated 1990-02-21 produced marked **1 R1**, to the spouse of the Petitioner purporting to cancel the said lease (as per **P 1(b)**) and purporting to grant him a lease in respect of lot no 514/ A2/ A1 comprising R;1, P;04.0 in extent, which comprised a portion of lot 514/ A2. It would appear that this sub division had been effected for the purpose of granting only a portion of lot 514/ A2 on lease to the 4th Respondent. By the letter dated 1990-02-21 (produced marked **1 R3**) the Provincial Lands Commissioner of the North Central Provincial Council has purportedly granted the 4th Respondents a

lease in respect of lot 514/ A2/ A2 comprising A;0, R;1, P;0 in extent, which consists of the remaining portion of lot 514/ A2.

Since it is the Provincial Lands Commissioner who has granted the above leases, it is necessary to examine the relevant provisions of law to ascertain the legality of those actions, by the Provincial Lands Commissioner.

According to Section 2 of the State Lands Ordinance it is the President who has been empowered by the Ordinance to sell, lease or otherwise dispose of state lands in the name or on behalf of the Republic, subject to the provisions of the Ordinance and the regulations made there under.

According to section 105 of the Ordinance the President may, in such manner and in such cases as may be prescribed, delegate to the Minister or to the Land Commissioner or other prescribed officer any power or duty conferred or imposed upon him or any authority vested in him or any discretion or function entrusted or assigned to him by or under the said Ordinance.

Learned Deputy Solicitor General drew our attention to the document , marked and produced as **2 R3** to establish that the said power referred to in Section 2 of the State Lands Ordinance has been delegated to the Government Agent. This delegation has been effected by the Gazette bearing No. 09/ 912 dated 1948-10-15 produced marked **2 R3** which contains the rules made under sections 94 and 95 of the State Lands Ordinance by the Minister of Lands. Regulation 24 therein states that any delegation made under section 105 of the State Lands Ordinance must be by way of a Gazette notification. Regulation 24 (2) read with the 3rd schedule therein shows that it is to the Government Agent that the powers vested in the President by virtue of section 2 (2) and section 2 (3) of the State Lands Ordinance has been delegated to.

Hence it is manifestly clear that the Provincial Lands Commissioner of the North Central Province is not the proper authority in law either to cancel or grant a lease for the occupation of a state land. Thus the letter produced marked **1 R1** dated 1990-02-21 and the letter dated 1990-02-21 produced marked **1 R3** issued by the Provincial Lands Commissioner becomes invalid in law.

The spouse of the Petitioner and upon his death the Petitioner, had complied with terms and conditions contained in the lease by setting up and running the said business of a garage.

The document marked **P 1(b)** has been issued by the Government Agent of Anuradhapura pursuant to a delegation made under the State Lands Ordinance in conformity with the law.

The issuance of the lease to the 4th Respondent by the Provincial Lands Commissioner of the North Central Provincial Council while **P 1(b)** remains valid is contrary to law.

The settlement proposed by the 3rd Respondent in the letter dated 2014-05-23 produced marked **P 13** is a settlement that has been proposed without taking into account the applicable legal position. Although the 3rd Respondent has stated in his letter **P13** that he has considered the report made by the Assistant Land Commissioner (legal) dated 2004-04-22 what has been stated by the Assistant Land Commissioner (legal) in that report is that the letter dated 1990-02-21 (by which a portion of the land has been given on lease to the 4th Respondent; i.e. lot number 514/ A/ 2) is not a legally valid document and that the long term lease granted to the

petitioner by **P 1(b)** cannot be cancelled or altered by such letters. Hence it is clear that the letter issued by the 3rd Respondent giving certain instructions to the Commissioner General of Lands is a letter that is contrary to law. In these circumstances we issue a Writ of Certiorari to quash the decisions of the 3rd Respondent in the documents marked **P 11** and **P 13**.

Writ of Certiorari is issued.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL