

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

**In the matter of an application for
mandate in the nature of Writ of
Mandamus under and in terms of Article
140 of the Constitution of The
Democratic Socialist Republic of Sri
Lanka**

CA/WRIT/267/2014

1. Hewa Kdawadduwage JinendraIndrasoma,
2. Hinguruhena Gamarelage Priyarthna,
3. Wijesundara Ranasinghe Pubuluwe
Mohotiralage Ariyarthna,
4. Danansuriya Vidanalage Saman Renuka
Wijewardena,
5. Maththmagoda Liyanaralalage Deshika
Wijyanthi Priyadarshni,
6. Hewa thama duwatge Harichandra
Hemapala,
7. Danie Joshep Joshep,
8. Pallegage Kapuralalage Gunarathna,
9. Wicramasinghe Arachchilage Dayarathna,
10. Wicramasinghe Arachchilage
Witharamalage Hemachandra,
11. Dodawatte Witharamalage
DarshanaGayan,
12. Galolu Kankanamlage Kularathna,
13. Wathugena Gamaralalage Palitha
Lakshaman,
14. Galle Katukurunde Bulathgei Piyasena,
15. Humpiti Gamaralalage Mithrapala,
16. Kirihena Vidanalage Somarathna.

All at "GoviGammanaya"
Basnagala, Nuriya,
Daraniyagala.

Petitioners

Vs,

1. Land Reform Commission,
P.O.Box 1526,
No. C 82, Hector Kobbekaduwa
Mawatha,
Colombo 07,
2. Nimal Punchihewa,
Chairman,
Land Reform Commission,
P.O.Box 1526,
No. C 82, Hector Kobbekaduwa
Mawatha,
Colombo 07,
3. Dr.H.M.S.Jayathunga,
Director –General,
Land Reform Commission,
P.O.Box 1526,
No. C 82, Hector Kobbekaduwa
Mawatha,
Colombo 07,
4. Pradeep Edirisinghe,
Director (Kegalle),
Land Reform Commission,
P.O.Box 1526,
No. C 82, Hector Kobbekaduwa
Mawatha,
Colombo 07,
5. S.P.Gunawardane,
Divisional Secretary,
Divisional Secretariat,
Deraniyagala,
6. Hon. Attorney General,
Attorney – General’s Department
Colombo 12

Respondents

Before : Vijith K. Malalgoda PC J (P/CA) &
S. Thurairaja PC J
Counsel : Gamini Hettiarachchi for the Petitioners
D.H. Siriwardane for the 1st and 2nd Respondents
Suranga Wimalasena SSC for the 5th and 6th Respondents

Argued on : 19.10.2016

Written Submission on: 15.11.2016

Order on : 07.12.2016

Order

S.Thurairaja PC J

The Petitioner has filed the Application to invoke the jurisdiction of this Court by way of *Mandamus*, to convey and transfer ownership of the allocated blocks of land as guaranteed by the 1st Respondent to the Petitioners, whereby accepting the value as prevailed in the year 2003.

The facts relevant to this Application are as follows. The Petitioners are villagers of the Project named; "China-Sri Lanka Friendship Agricultural Village" established in the year 2003 funded by the Government of China and was created in Basanagala, Deraniyagala.

The said Project had been approved by the Cabinet Ministers of Sri Lanka with the model village formed on a land belonging to the 1st Respondent, the Land Reform Commission.

The Petitioners were selected by the 5th Respondent at a Land Kachcheri held and the Petitioners qualified as the cultivating farmers on the allocated blocks of land, and such was accepted by the 1st Respondent. The said selection was duly informed to the Petitioners by letter dated in September, 2002 from the 5th Respondent and the vacant possession of the allocated blocks of land was delivered to the Petitioners on the 13th September, 2002.

Funded by Tea Small Holdings Authority to grow tea and through other project loans and aids, the Petitioners constructed houses and common premises forming a village and in turn transformed the waste land into fertile lands and cultivated tea in the allocated lots.

Subsequently, the Petitioners were communicated by the Director of the Land Alienation Unit of the 1st Respondent and requested the Petitioners to deposit a sum of Rs. 5000/= as an advance payment to further the survey process and the subsequent transfer of ownership subjected to the payment of market value of the blocks of land as prevailed in the year 2003.

Accordingly, the Petitioners complied. However, the 1st Respondent failed to survey the blocks of land in year 2003 and later in year 2013 as well. Nevertheless, the Petitioners remain in continuous possession of the respective lots allocated initially in year 2002.

Irrespective of the representations made by the Petitioners to the 1st Respondent and the relevant Government Authorities, the title of the allocated blocks of land had not been transferred to the Petitioners since the year 2003 and the ownership remains unchanged.

Prior to the outright transfer of the blocks of land claimed by the Petitioners, it is of essence to obtain with absolute certainty whether the 1st Respondent was in fact competent to make such representations as to the transfer of ownership.

Part IV, **Section 44 (a)** of Land Reform Law No. 1 of 1972 established the 1st Respondent and specified the scope of its function and powers. The 1st Respondent accordingly *may*, “*acquire, hold, take or give on lease or hire, exchange, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property..*” Although, the 1st Respondent is conferred with authority to sell/transfer lands, the authority is *limited* to lands vested with the LRC by operation of Land Reform Law. (Emphasis added)

Therefore, unless the land in question is in fact owned by the 1st Respondent, a transfer of the land ownership cannot take place otherwise. Section 2 of the State Lands Ordinance No. 8 of 1947 clearly stated that a State owned land can *only* be disposed by the President and on behalf of Republic of Sri Lanka. Thus, further establishing that, a State owned land cannot be transferred by the 1st Respondent to the Petitioners.

However, the ownership of the land in question is vested in the 1st Respondent. Therefore, the 1st Respondent is within the capacity and has the due authority to transfer the ownership of the blocks of land to the Petitioners at its *discretion* based upon the statutory law found in Section 44(a) of Land Reform Law.

Although, the conveyance and the transference remain at the discretion of the 1st Respondent, a representation however, was made to the Petitioners by the 1st Respondent by the exercise of discretion by letter. The said representation resulted in the Petitioners in depositing a sum of Rs. 5000/= Thus, establishing that there arose *reliance* stemming from legitimate expectation which arose due to the aforementioned representation. Moreover, the legitimate expectation was further fuelled by the vacant possession granted by the 1st Respondent.

In an instance when a public authority by way of a representation guaranteed to adhere the representation upon which a person had placed reliance resulting in legitimate expectation, it would give rise to principles of natural justice and fairness to ensure the protection of a procedural or substantive interest. This is to prevent authorities from abusing their discretionary power.

In the case of **R (Bhatt Murphy) v Independent Assessor (2008) EWCA Civ 755** provided, “*the power of public authorities to change policy is constrained by the legal duty to be fair (and other constraints which the law imposes). A change of policy which would otherwise be legally unexceptionable may be held unfair by reason of prior action, or inaction, by the authority.*”

Thus, the inaction by the 1st Respondent to transfer the title of the blocks of land is unfair and unreasonable. The failure on the part of the 1st Respondent, to observe the representation made once the Petitioners were chosen for the allocation of the blocks of land is a circumstance where the 1st Respondent attempts to abuse its powers by way of non-compliance.

Naturally, non-reliance by the Petitioners on the representation made would not give rise to legitimate expectation and thereby would not entail the requirement of the 1st Respondent to comply with the representation made as observed in the case of **R v Secretary of State for National Heritage ex p. J Paul Getty Trust (1997) EU LR 407**. Therefore, the outright transfer of title of the blocks of land is not compulsory.

However, it is evident that the Petitioners had legitimate expectation since being qualified from the inception and thus, required the 1st Respondent to adhere the representation made as to the outright transfer under the 2003 prevailing market value. Furthermore, the advance payment of Rs. 5000/= was made for the survey process with an expectation of an outright transfer.

Therefore, a question arises whether the failure to transfer the title by the 1st Respondent is within the purview "*Wednesbury unreasonableness*", on the part of the Petitioners for the loss of expectation.

The principle of unreasonableness was observed in the case of **Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223** Lord Greene MR stated, ".....the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in **Short v Poole Corporation (1926) Ch 66, 90, 91** gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

As Lord Scarman explained in **R v Secretary of State for the Environment ex p. Nottinghamshire CC (1986) AC 240 at 249** according to the **Wednesbury** case, the Court will intervene to quash the decision reached by an authority, where it concerns a circumstance in which the said authority had exercised its discretion illegally.

Therefore, a ground for judicial review concerns unreasonableness, where the statutory power vested in an authority has been abused and viewed as being unreasonable. Here the statutory power vested in the 1st Respondent is abused by a discretionary decision *to not comply* with the representation made resulting in unreasonableness.

Furthermore, the 1st Respondent is entrusted with the authority to exercise its discretionary powers for the benefit of the public. It was further held in **Premachandra and Dodangoda v Jayawickrema and Bakeer Markar and Others (1993 (2) SLR 294)** that, “the discretion must be exercised reasonably. A person entrusted with discretion must so to speak direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said, and often is said, to be acting unreasonably.”

In order for the Petitioners to so benefit, the 1st Respondents must be duly conferred with such authority to transfer land and such statutory authority is in fact, without a doubt is vested in the 1st Respondent’s discretion and further, the Petitioners had complied with the requisite criteria to succeed. Therefore, the non-transfer of ownership of the blocks of land is unreasonable on the face of it.

Therefore, the conveyance and the transfer of title prayed for by the Petitioners due to the non-compliance and failure to apply the statutory discretion based on the representation made resulted in unreasonableness. Thus, I am of the view that this Application suffices ground to invoke the inherent jurisdiction of this Court by way of *Mandamus* and that the Petitioners are entitled to the conveyance and transfer of title of the allocated blocks of land and furthermore, the State Counsel for the 5th and 6th Respondents are of the view that the Petitioners are entitled to the said conveyance and transfer.

It should be noted that some of the petitioners have not submitted complete evidence before this court hence the court makes following order.
Issue, Writ of Mandamus as prayed in Prayer (b) of the petition, subject to the condition that the petitioners who were originally selected at the land Kachcheri and fulfilled the mandatory requirements.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)
I agree,

PRESIDENT OF THE COURT OF APPEAL