

**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  
Mandamus* under article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka**

1. S. Gnanasampanthan
2. S. Anandarajah,  
No. 15, St. Kildas Lane, 64, Bazar Street,  
Vavuniya.

**PETITIONERS**

**CA/WRIT/76/2015**

**Vs,**

1. Dehiwala- Mount Lavinia Municipal Council  
Dehiwala
2. Dhanasiri Amaratunga,  
Hon. Mayor,  
Dehiwala- Mount Lavinia Municipal Council  
Dehiwala
3. K.V.B.D.N. Muthugala,  
Municipal Commissioner,  
Dehiwala- Mount Lavinia Municipal Council  
Dehiwala
4. K.S. Withanage,  
Chief Accountant,  
Dehiwala- Mount Lavinia Municipal Council  
Dehiwala
5. Weerakkodi Wyneris Perera of Nugegoda,  
Waskadubedda, Panadura, Thotamuna.

**RESPONDENTS**

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

**Counsel:** Faiz Musthapha PC with Faisza Marker for the Petitioners  
J.P. Hapuarachchi for the 1<sup>st</sup> to 4<sup>th</sup> Respondents

Written Submissions on: 22.09.2016

**Judgment on: 26.01.2017**

### **Order**

**Vijith K. Malalgoda PC J**

Petitioner to the present application S. Gnanasampanthan and S. Anandarajah had come before this court seeking inter alia,

- c) A mandate in the nature of a writ of *Certiorari* quashing the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and/or 4<sup>th</sup> Respondents or any one or more of them (reflected in P-14) to insert the name of Weerakkody Wyneris Perera in the Assessment Register/Certificate of Ownership of the 1<sup>st</sup> Respondent Council.
- d) A mandate in the nature of a writ of *Mandamus* 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and/or 4<sup>th</sup> Respondents or any one or more of them to delete the name of Weerakkody Wyneris Perera in the Assessment Register/Certificate of Ownership of the 1<sup>st</sup> Respondent Council.

The two Petitioners who claimed to be the co-owners of premises bearing assessment number 11 Frazer Avenue, Dehiwala had complained of a decision by the 1<sup>st</sup> to 4<sup>th</sup> Respondents to insert the name of the 5<sup>th</sup> Respondent as a co-owner to the said premises and sought the relief claimed as above.

After the notices were dispatched on all the Respondents, including the 5<sup>th</sup> Respondent, they were represented by counsel before this court. The 1<sup>st</sup> to 4<sup>th</sup> Respondents decided to file objections before this court and accordingly the objections of the said Respondents were tendered at the Registry on 22.07.2015.

When this matter came up before this court on 21.10.2015 the Learned President's Counsel who represented the 5<sup>th</sup> Respondent had informed the death of his client 5<sup>th</sup> Respondent and an undertaking was given to supply the Petitioners with necessary information for the Petitioners to consider substitution. When the matter was called again on 07.12.2015 for the above purpose, the Learned President's Counsel had moved further time to supply the necessary material to the Petitioner. However when the matter was called once again on 20.01.2016 for the above purpose, the counsel who represented the 5<sup>th</sup> Respondent had informed court that the "heirs of the 5<sup>th</sup> Respondent are not interested in taking part in these proceedings" and no counsel had appeared before this court representing the 5<sup>th</sup> Respondent thereafter.

In the absence of any representation or any pleading submitted before this court representing the 5<sup>th</sup> Respondent this court decided to proceed with the parties represented before this court and on the request made by the said parties to dispose this matter on written submissions, the matter was fixed for judgment by me on the written submissions tendered on behalf of the Petitioners as well as on behalf of the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

As submitted before this court, the two Petitioners above named become the titleholders to the premises bearing assessment number 11 Frazer Avenue, Dehiwala since 16.12.2004 by the Deed of Transfer bearing No 92 attested by K. Jeyaraj N.P. The said land depicted as lot 3931 in plan 1704 dated 28.-7.1999 prepared by I.M.C. Fernando Licensed Surveyor to the extent of 24.20 perches was registered at the Land Registry under volume 84 Folios 245 and 246 and volume 82 Folios 69 and 70.

The Petitioners have further submitted that, prior to the purchase of the said land the Petitioners have caused a search at the Land Registry and satisfied with the title of their predecessors in title, who were seized, possessed and sufficiently entitled to it by virtue of Administrators Conveyance bearing No 260 dated 24.11.2004 attested by G.K Wasantha Ranjith N.P. after receiving letter of Administration by the District Court of Mt. Lavinia in Testamentary Case bearing No 1163/007T instituted by the 1<sup>st</sup> vendor as the petitioner in respect of the intestate estate of her late husband Jerome Ellswyn Ignatius de. Andrado.

In January 2005 the Petitioners through their Attorney at Law had submitted the devolution of title in respect of the said premises along with supporting documents to register the names of the Petitioners as the new owners of the said premises, and the 1<sup>st</sup> Respondent Council having processed the said documents, issued the Petitioners the Certificate of Ownership and Non vesting Certificate dated 18.01.2005 (P-9).

According to the Petitioners, since the said purchase in December 2004 from its predecessors in title namely Makoladeguruge Therese Anastasia de Andrado, Marie Joan Enoka de Andrado and Ishani Therese Antonita de Andrado the Petitioners were in peaceful possession of the said land except for a application filed under section 66 of the Primary Court Procedure Act by one Dhananjayanathan Tanikairasan making Marie Jhon Enoka de Andrado and the 2<sup>nd</sup> Petitioner as first and second Respondents but the said application too was concluded after a settlement reached at the High Court of Colombo.

In July 2014 the Petitioners made an application to the 1<sup>st</sup> Respondent Municipality for a certificate of ownership after re-survey of the said land which confirmed the extent as 24.20 perches as depicted in plan 1704 dated 28.07.1999 with the intent of developing the land.

It is at this stage only the Petitioners got to know through an official of the 1<sup>st</sup> Respondent Council that in addition to the names of the two Petitioners, that the Assessment Register of the 1<sup>st</sup>

Respondent Council carries another name of a person by the name Weerakkody Wyneris Perera in respect of the said premises.

As submitted by the Petitioners produced marked P-14, the certificate of ownership with regard to No 11 Frazer Avenue, Dehiwala carried the name of G.E. Andrado as the owner for the period of 01.01.1989 to 30.11.2004, for the period at 01.12.2004 to 31.12.2004 the said name had been changed to Jerome Ellswyn Ignatius de Andrado and thereafter from 01.01.2005 to 31.01.2007 the names of the two Petitioners namely Sivapathasundaram Gnanasampanthan and Shanmugam Anandarajah had been entered as the owners of the said premises.

However since 01.02.2007 in addition to the above two names, the name of Weerakkody Wyneris Perera had also been included as an owner to the said premises. When the Petitioners requested for the assessment notice for the year 2015, the 1<sup>st</sup> Respondent had issued an assessment notice which carries the name of S. Gnanasampanthan, S. Anandarajah and Weerkkody Wyneris Perera.

As revealed from the documents placed before this court by the Petitioners, the Petitioners after receiving the assessment notice for the year 2015 (i.e. after the Petitioners made an application to the 1<sup>st</sup> Respondent Council for a certificate of ownership) had written to the 1<sup>st</sup> and the 3<sup>rd</sup> Respondents requesting them to remove the name of Wyneris Perera from the certificate of ownership for the premises in question i.e. No 11 Frazer Avenue, Dehiwala and to correct the assessment register, but the 3<sup>rd</sup> Respondent by his letter dated 12.01.2015 refused to remove the name of Weerakkody Wyneris Perera, since the material available in the file reveals a co-ownership by the said W.W. Perera for the premises in question.

As noted in this judgment, the 5<sup>th</sup> Respondent Weerakkody Wyneris Perera or his heirs did not take part in these proceedings. The Learned President's Counsel who represented the 5<sup>th</sup> Respondent had informed this court that the heirs of late Weerakkody Wyneris Perera were not interested in taking part in these proceedings. Even though the 5<sup>th</sup> Respondent who is the beneficiary by the impugned

decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents, did not take part in these proceedings the material relevant to this application, said to have submitted by the 5<sup>th</sup> Respondent were placed before this court by 1<sup>st</sup> to 4<sup>th</sup> Respondents and resisted the application of the Petitioners on the basis of those documents.

As submitted by the 1<sup>st</sup> to 4<sup>th</sup> Respondents,

- a) By an application of abstract of the title deed dated 16.08.2006 K.D.A. de Silva Notary Public had made an application to insert Weerakkody Wyneris Perera's name in the assessment register in respect of the questioned premises
- b) That to substantiate the rights of the said W.W Perera, two deeds have been submitted to the 1<sup>st</sup> Respondent
- c) That under and by virtue of deed No 1663 dated 31<sup>st</sup> January 1945 attested by J.P. Salgoda N.P one James Andrew de Andrado of Frazer Avenue Dehiwala was a co-owner to the land described in the schedule to that deed
- d) The aforesaid J.A. de. Andrado by deed 476 dated 21.03.1951 attested by D.L. Salgoda N.P transferred the same to Trust Insurance Company Ltd
- e) The said Trust Investment Company had transferred the same to Weerakkody Wyneris Perera by Deed No 552 dated 22<sup>nd</sup> October 1956 attested by F.N. Dias Abeysinghe N.P
- f) Having satisfied with the documents submitted to the 1<sup>st</sup> Respondent the 5<sup>th</sup> Respondent's name had been registered in the registries of the 1<sup>st</sup> Respondent

Whilst challenging the above position taken up by the 1<sup>st</sup> to 4<sup>th</sup> Respondents the Petitioners have relied on the guidelines given by the 1<sup>st</sup> Respondent itself when an application of abstract is tendered for registrations and argued that the said abstract of title deed was accepted by the 1<sup>st</sup> Respondent in violation of the said guidelines which are produced before this court marked X2.

As observed by this court the said guidelines required,

- a) A surveyor plan of the land to be submitted
- b) The correct assessment number and the correct details of the land to be included
- c) If the transferor of the property is a company a resolution passed by the Director Board to sell the property

but none of the said requirement had been fulfilled by the applicant when submitting the abstract of title for Registration.

As submitted by the Petitioner, the abstract of title refers to a deed of transfer said to have attested on 22<sup>nd</sup> October 1956 but not taken any interest to register the abstract with the 1<sup>st</sup> Respondent Council for 50 years which creates a doubt in the mind of and any reasonable person. However when the said abstract was submitted for registration, the following discrepancies were clearly visible in the application, namely

No surveyor plan was submitted along with the application but the four boundaries referred to above were different to the boundaries of the plan submitted for registration by the Petitioner.

The assessment number referred to in the application bears the assessment number as, 19 Frazer Avenue (vide the certificate by the AAL) but the land referred to bears 11 Frazer Avenue.

The land referred to abstract of title contains 32 perches but the land referred to this application No 11 Frazer Avenue where the abstract of title belonging to the two Petitioners were registered contained only 24.20 perches.

But the Municipal Authorities said to have proceeded to register the title deed under No 11 Frazer Avenue without giving any notice to the two Petitioners already registered their title deeds under No 11 Frazer Avenue.

As revealed before this court, the Petitioners were informed of the said registration for the 1<sup>st</sup> time in the year 2014 when they make an application for a copy of the Certificate of Ownership for the said

land. However the Petitioners have produced the Rate Receipts issued by the 1<sup>st</sup> Respondent Council for the year 2012, 2013 and 2014 under the name of the second Petitioner. However for the 1<sup>st</sup> time the 1<sup>st</sup> Respondent Council had issued an assessment notice in the names of the two Petitioners and the 5<sup>th</sup> Respondent for the year 2015 after the application was tendered by the Petitioners for a copy of the Certificate of Ownership in the year 2014.

The Respondents have further submitted some documents to satisfy that they have summoned both parties for an inquiry to resolve the issue. However in this regard the only document submitted by the Petitioners before this court is a letter by the 3<sup>rd</sup> Respondent informing that he cannot implement the request by the Petitioner to delete the name of Weerakkody Wyneris Perera but no other document calling the Petitioner for an inquiry.

In this regard the Respondents have produced two documents marked R6 and R7 to satisfy this court the steps the 3<sup>rd</sup> Respondent has taken when he received a complaint from the Petitioners.

As observed by this court R6 is a letter dated 26.11.2014 sent to the 5<sup>th</sup> Respondent with a copy to Attorney at Law- K.D.A de Silva who certified the abstract of title, calling for any objection for the request made by the two Petitioners to remove the name of the 5<sup>th</sup> Respondent. The 3<sup>rd</sup> Respondent had once again sent a letter to the 5<sup>th</sup> Respondent requesting him to be present for an inquiry before the 2<sup>nd</sup> Respondent on 02.01.2015. The 2<sup>nd</sup> and the 3<sup>rd</sup> paragraphs of the said letter read thus,

2. උක්ත හිමිකම් සම්බන්ධයෙන් ඔබ පාර්ශවය සඳහා යම් විරෝධතාවයක් වන්නේ නම් ඊට හේතු පාදක කරනු ලබන නීතිමය ලේඛන සමඟ මේ පිලිබඳව ගරු නගරාධිපතිතුමාගේ ප්‍රධානත්වයෙන් පැවැත්වෙන රැස්වීම සඳහා 2015.01.02 දින පෙ.ව 10.00ට පැමිණ ඉදිරිපත් කරන ලෙස දැනුම් දෙමි. උක්ත රැස්වීම නගරසභා ගොඩනැගිල්ලේ 4වන මහලේ පිහිටි රැස්වීම් ශාලාවේදී පැවැත්වේ.
3. තවද මේ සඳහා ඉහත හිමිකම් දක්වනලද සියළු පාර්ශවයන් වෙත සිය හිමිකම තහවුරුකිරීමේ ලේඛන සමඟ සහභාගී වන ලෙස දන්වා ඇති බවද සඳහන් කරමි.



Even though there is reference to summoning the other party for the said inquiry, the Respondents have failed to submit any notice sent to the two Petitioners requesting their presence for the said inquiry.

However based on the said purported inquiry said to have been held on 02.01.2015, the Respondents had submitted further documentation marked R8, R9, R10 and R11 to support the claim of the 5<sup>th</sup> Respondent.

As observed by this court, the above Respondents have accepted the documentation submitted on behalf of the 5<sup>th</sup> Respondent without giving any opportunity for the Petitioners to challenge the said documents but 10 days thereafter on 12.01.2015 written to the Petitioners refusing their request to delete the name of the 5<sup>th</sup> Respondent from the Assessment Register.

When considering the events took place as revealed before this court, I am mindful of the following observations made by 'Wade' on the Principles of Natural Justice.

"It is fundamental to fair procedure that both sides should be heard *audi alteram partem*, 'hear the other side.' This is the more far-reaching of the principles of Natural Justice, since it can embrace almost every question of fair procedure, or due process, and its implications can be worked out in great detail. It is also broad enough to include the bias, since a fair hearing must be an unbiased hearing; but in deference to the traditional dictum; that rule has already been treated separately.

(Administrative Law HWR Wade & C.F. Forsyth 10<sup>th</sup> Edition page 402)

When considering the above observation it is clear that the Respondents have acted in violation of the fundamental to fair procedure by not allowing a fair hearing to the Petitioners. As observed above the Petitioners decided to purchase the land in question after taking all precautional steps and after purchasing the land they have promptly submitted the necessary documentation to the 1<sup>st</sup>

Respondent and obtained the Certificate of Ownership and the Non-vesting Certificate for the land in question. They have paid all relevant taxes since then and every time the said payments were made a receipt had been issued in the name of the Petitioners until 2015. The 1<sup>st</sup> Respondent had failed to issue an assessment notice with the name of Weerakkody Wyneris Perera until it was transpired when petitioners went and asked for a fresh Certificate of Ownership in order to develop the land.

As revealed before this court Weerakkody Wyneris Perera was not a co-owner of the premises identified as No 11 Frazer Avenue Dehiwala at any time since 01.10.1989. However as observed above, when the 5<sup>th</sup> Respondent submitted an incomplete application for a abstract of title, without a proper plan, to a wrong assessment number, without having proper boundaries and with a different extent of land, supported by a deed of transfer said to have attested 50 years ago, the 1<sup>st</sup> to 4<sup>th</sup> Respondents have immediately register the said abstract under No 11 Frazer Avenue without giving any opportunity or notification to the two Petitioners whose title has already being registered under No 11 Frazer Avenue.

The subsequent conduct of the Respondents specially the 3<sup>rd</sup> Respondent, clearly establishes that the above Respondents conduct was bias against the Petitioners, when he summoned only the 5<sup>th</sup> Respondent and collected new material without giving any opportunity to the Petitioners to challenge the said documents, in support of his earlier decision and thereafter written to the Petitioners his decision not to delete the name of the 5<sup>th</sup> Respondent from the Assessment Register.

The extent to which the said Respondents conduct was prejudicial, as against the Petitioners were clearly demonstrates, when the said Respondents have relied on the documents so collected at the alleged inquiry said to have conducted on 02.01.2015 without notifying the Petitioners and made use of them to justify their decision before this court by producing them marked as R8, R9, R10 and R11.

Indian Supreme Court in the case of *Canara Bank V. Debasisd Das (2003) 4 SCC 557* discussed the main features of the principles of Natural Justice as follows,

“Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the frame- work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi- judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life. (Para 19)

Over the year by the process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing having their roots in the innate sense of man for fair play and justice which is not the preserve any particular race or country but is shared in common by all men. The first rule is “*nemo judex in causa sua*” or *nemo debet esse judex in propria causa sua*” that is, ‘no man shall be a judge in his own cause’. The second rule is “*audi alteram partem*”, that is, “*here the other side*”. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely “*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*” that is. “he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is

right” or in other words, as it is now expressed, “justice should not only be done but should manifestly be seen to be done.” (Para 21)

In the case of *A.K.Kraipak V. Union of India AIR 1970 SC 150* Indian Supreme Court held when considering bias, that there must be a reasonable likely hood and in deciding in such question human probabilities and ordinary cause of human conduct must be taken into consideration.

M.R. Mallick in his book title *Writs Law and Practice* observed the requirement of bias as, “As held in *S. Parthasarathy V. State of Andra Pradesh AIR 1973 SC 2701* it means a substantial possibility of bias and the same may be made to appear not only from the materials as contained by the party complaining but from such further facts as he might readily have ascertained and easily verified in the course of inquiry. Therefore, the question whether a person is biased has to be determined on the probability to be inferred from the circumstances by the court objectively or upon the basis of the impression that might reasonably be left in the mind of the party aggrieved or the public at large.”

(M.P. Mallick- *Writs Law and Practice Second Edition* 741)

When considering the circumstances under which the decision to include the name of Weerakkody Wyneris Perera in the Assessment Register/ Certificate of Ownership with regard to No 11 Frazer Avenue Dehiwala was taken as discussed above, it is clear that the 1<sup>st</sup> to 4<sup>th</sup> Respondents above named had acted in violation of the Rules of Natural Justice and was acted with bias against the Petitioners above named.

In the said circumstances, I conclude that the Petitioners are entitled for the issuance of a mandate in the nature of writ of *Certiorari* to quash the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and /or 4<sup>th</sup> Respondents or any one or more of them (reflected in P-14) to insert the name Werakkody Wyneris Perera in the Assessment Register/ Certificate of Ownership of the 1<sup>st</sup> Respondent Council as prayed in to paragraph ‘C’ to the Petition.

I therefore issue a mandate in the nature of a writ of *Certiorari* quashing the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and/or 4<sup>th</sup> Respondents or any one or more of them (reflected in P-14) to insert the name of Werakkody Wyneris Perera in the Assessment Register/ Certificate of Ownership of the 1<sup>st</sup> Respondent Council as prayed in paragraph 'C' to the Petition.

In the said circumstances the necessity to issue a writ of *Mandamus* directing the said Respondents to delete the name of Werakkody Wyneris Perera from the said Register will not arise and therefore this court is not inclined to issue a writ of *Mandamus* as prayed in paragraph 'D' to the petition. Application allowed with cost.

PRESIDENT OF THE COURT OF APPEAL