

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

CA (Writ) No: 1011/06

Kolonnawa Multi-Purpose Co-operative Society,
224, Kolonnawa Road,
Wellampitiya.

Petitioner

Vs.

Divisional Secretary,
Divisional Secretariat,
Kolonnawa.

And Others

Respondents

Case No: CA 1011/06

BEFORE : A.H.M.D. Nawaz, J
P. Padman Surasena, J.

COUNSEL : T.M.S. Nanayakkara for the Petitioner.
Arjuna Obeysekera, SDSG for the Respondent.

ARGUED &

DECIED ON: 31.01.2017

A.H.M.D. Nawaz, J

Counsel for the petitioner supports his application for a writ of certiorari to quash P28 and P37 for the reasons set out in the petition dated 21.06.2006. In opposition to this application, the Counsel for the 4th respondent and the Hon. Attorney General have taken a preliminary objection on the basis that the petitioner has no *locus standi* to maintain this application. Mr. Manohara de Silva, PC has outlined the preliminary objections with which the learned senior

Deputy Solicitor General Mr. Arjuna Obeysekara has concurred. Mr. T.M.S Nanayakkara who appears for the petitioner has responded to the preliminary objections basing his argument on the written submissions that he has filed before this Court. The basis of the preliminary objections is that the documents that are sought to be quashed namely P28 and P37 do not pertain to the petitioner before this Court. The document marked P28 which is dated 24.01.02, is an annual permit granted to the Western Provincial Transport Co-operative Society giving a permit to the said co-operative society to develop the land as described morefully in the said permit with conditions attached thereto. One of the conditions, as has been pointed out by the learned Senior Deputy Solicitor General, is that the permit holder namely the Western Provincial Transport Cooperative Society cannot alienate or transfer the *jus in re aliena* namely the right to develop the land given in P28 to any other person and this right has been restricted to the permit holder in the said permit. Among other conditions of this permit is the date of expiry which is specified to be the 31st of December 2002. In other words by

31.12.2002, this land, by the very terms of this permit, ought to have reverted to the state. P28 which is a document to alienation of a state land it has expired on 31.12.2002. However, this application has been filed on 21.06.2006 almost four years later after the document has outlived its usefulness as far back as 31.12.2002.

P28 is a document which is no longer valid after 31 December 2002 and as P28 was never issued in the petitioner's name, P28 could not have affected the rights of the petitioner and this document cannot form the basis of an application for prohibition as no steps have been taken to eject the petitioner based on this document marked P28. Therefore, this Court sustains the preliminary objection raised on behalf of the respondent in regard to the issue of writ of prohibition based on P28.

The other document that is sought to be quashed by a writ of certiorari is the letter dated 31.08.2005 issued by the 1st respondent(P37). This document too does not vest any right in the petitioner and if at all when this document was issued on the 31st August 2005, it was in assertion of the rights of the State in regard to

the land which is the subject matter of this application. The petitioner is unable to show that any rights affecting the petitioner flow from the issuance of letter marked P37 and it is in these circumstances that the respondent resists this application on the basis of a lack of locus standi. Mr. T.M.S. Nanavakkara responding to this preliminary objection states that the commissioner of cooperative society by virtue of powers vested in it has transferred the assets of the Western Province Cooperative Transport Society to the petitioner. It appears that there is no proof before this Court that the Western Province Cooperative Transport Society had any assets after 31 December 2002 for them to be alienated to the petitioner, as the said Cooperative Transport Society had only a permit to develop a land until its expiry on 31 December 2002. There is no other document produced before this Court or evidence that would sustain an application for judicial review on the ground of legitimate expectation.

In the circumstances, this Court takes the view that P37 does not affect in any way the rights of the petitioner, which are sustainable in administrative justice. Therefore, this Court upholds the preliminary

objections raised on behalf of the respondents and dismisses the application.

JUDGE OF THE COURT OF APPEAL.

P.Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-