

**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**

G.K. Udeni Janaka Perera,
No. 871/2, Rukmale Road, Kottawa,
Pannipitiya.

PETITIONER

CA/WRIT/337/2015

Vs,

1. Central Environmental Authority,
“Parisara Piyasa”,
No.104 Denzil Kobbekaduwa Mawatha,
Battaramulla.
2. Prof. Lal Mervin Dharmasiri,
Chirman,
Central Environmental Authority,
“Parisara Piyasa”,
No. 104 Denzil Kobbekaduwa Mawatha,
Battaramulla.
3. K.H. Muthukudaarachchi,
Director General,
Central Environmental Authority,
“Parisara Piyasa”,
No. 104 Denzil Kobbekaduwa Mawatha,
Battaramulla.
4. Janaka Kumara Elvitigala,
No. 871, Rukmale Road,
Kottawa,
Pannipitiya.

5. Kanthi Kodikara,
Chairperson,
Urban Council,
Maharagama.
6. The Secretary,
Urban Council,
Maharagama.
7. The Urban Council,
Maharagama.
8. The Urban Development Authority,
6th and 7th Floors,
Sethsiripaya,
Battaramulla.
9. Swarna Kusumaseeli,
Director (Enforcement),
The Urban Development Authority,
6th and 7th Floors,
Sethsiripaya,
Battaramulla.
10. The Commissioner,
Department of Local Government,
(Western Province)
No. 02, Cambridge Terrace,
Colombo 02.
11. The Assistant Commissioner,
Department of Local Government,
(Western Province)
No. 02, Cambridge Terrace,
Colombo 02.
12. Assistant Commissioner,
Department of Local Government,
Colombo.

RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &
H.C.J Madawala J**

Counsel: Faiszer Marker for the Petitioner
Uditha Egalahewa PC with Zhiloma Chandrasekara for the 4th Respondent
Fazana Jameel PC Additional Solicitor General with Ruwanthi Herath
Gunaratne SC, for 1st, 2nd, 3rd, 8th and 9th Respondents
Chandrika Morawaka with Kumari Hettige for the 6th and 7th Respondents

Inquiry on: 19.10.2015, 16.11.2015, 20.01.2016, 31.03.2016, 03.06.2016

Written Submissions on: 22.09.2016

Order on: 10.03.2017

Order

Vijith K. Malalgoda PC J

Petitioner to the present application G.K. Udeni Janaka Perera had come before this court seeking inter alia,

- b) A writ of *Certiorari* quashing the Environmental Protection License (here in after referred to as EPL) issued to the 4th Respondent dated 28.01.2015.
- c) A writ of *Mandamus* directing the 5th Respondent or any one or more Respondents to take steps according to law against the operation of the said garage at the above captioned premises by the 4th Respondent.

- d) An interim order restraining the 4th Respondent from operating the business of a garage at the above captioned premises until final determination of this application or upon terms determined by the court.

When the present application was supported before this court on 21.08.2015, this court after considering the material placed before the court *ex parte*, had granted interim relief as prayed in paragraph (d) above for a limited period.

The Respondents when appeared before this court had raised objections for the extension of the said interim order and filed limited objection before us. The matter was thereafter taken up for inquiry into the extension of stay order before us and in the present order we will be considering the material placed before us by all the parties in deciding whether the interim order should be extended or not pending final determination of this case.

The Petitioner who is a resident at No. 871/2 Rukmale Road, Kottawa, Pannipitiya had complained to the 1st Respondent Authority for the 1st time on 14.08.2014 against the 4th Respondent, of the serious health hazards caused by operating a bus repair garage at No. 871 Rukmale Road, Kottawa, Pannipitiya.

On this complaint, the 1st Respondent Authority has caused a site inspection on 05.09.2014. Through the observation of the said site inspection it was revealed, that at the time of the inspection, spray painting in an open air area and repairing of buses were carried out in the premises in question, oil spills/ seepage was observed in vicinity of the garage.

Consequent to the said site inspection the 4th Respondent was informed in writing that, he was required to stop spray painting with immediate effect and that it was necessary for the 4th Respondent to obtain an EPL form the Local Authority to continue with the garage. (P-3)

As revealed before this court, the Petitioner during the same period had lodged several complaints with number of authorities including Police Station Kottawa, Police Office Mirihana and Department of Local Government of the Western Provincial Council.

While investigations and inquiries are in progress, the 4th Respondent said to have obtained an Environmental Protection License from 5th Respondent under part C of Government Gazette No 1533/16 dated 25.01.2008 which delegates the granting of an EPL to Local Authorities.

The petitioner who was dissatisfied with the said decision by the 5th Respondent to issue the 4th Respondent with an EPL had challenged the said decision and prayed the relief as submitted above.

Even though the parties wanted the present inquiry be limited to the extension of the stay order, we observe that, the parties have submitted comprehensive submissions which is sufficient even to decide the main matter, but we will restrict this order only to the question of extension of stay order.

One main argument raised by the Petitioner during the inquiry was the effect of the zoning identified in the Development Plan for the Urban Development Area of Maharagama published on 12.09.2008 for the period 2008-2020. In this regard the Petitioner had taken up the position that,

“the said license has been issued contrary to the National Environment Act No 47 of 1980 for the reason that the said garage is situated in a Residential Area contrary to the zoning plan 2008-2020 and as such *ultra vires* the powers conferred on the 5th Respondent...”

Whilst submitting that the garage is situated in a Residential Area identified under the Development Plan 2008-2020, the Petitioner argued that operating a garage is not identified as a permissible user under the said Development Plan. However, this position was disputed before us by the 4th Respondent and submitted that the said area comes under Mixed Development Area, but the Petitioner in support of his argument produced a letter from Provincial Director- UDA confirming that the area in question comes within a Residential Area.

The Learned Additional Solicitor General who represented the 1st to 3rd and 8th and 9th Respondents took up the position that the said Development plan prepared under section 8 of the Urban Development Act No. 41 of 1978 by its very nature cannot be retrospective in operation and zoning has to be done to be effective in the future. A garage which was in operation at the time the development plan come in effect cannot be removed from the area but, they have to be regulated under the provisions of the prevailing legislature. In this regard the Learned Additional Solicitor General submitted that the National Environment Act No. 47 of 1980 and the Regulations made there under had provided the issuance of an EPL to cover particular prescribed activities and section 23A of the amending Act No 53 of 2000 empowered the Minister to determine what activities would require a license, being activities which involve or results in discharging, depositing or emitting waste in to the environment causing pollution.

In this regard our attention was drawn to Gazette extra ordinary No. 1533/16 dated 25.01.2008 where the Minister had made regulation under section 23A referred to above, and under part “c” vehicle repairing or maintaining garages excluding spray painting as an activity which requires a license under the said section.

After the 1st inspection by the officers of the 1st Respondent on 05.09.2014, another site inspection was carried out by the 1st respondent on 09.12.2014 and the report prepared by the officers of the 1st Respondent Authority was produced before us marked 1R2, where the said officials have observed an improvement of the cleanliness and organization of the said premises and at the time the inspection carried out, spray painting work has been stopped. The above findings were communicated to the parties by the first Respondent by letter dated 29.12.2014. (P-14) Subsequent to the said letter by the 1st Respondent, the 4th Respondent had applied for a EPL form the relevant Local Authority, i.e. Maharagama Municipal Council and the said Council had issued the impugned EPL dated 28.01.2015 valid for a period of 3 years commencing from 05.12.2014 and as observed by this court, the said

EPL contained several conditions including prohibition on spray painting, washing of vehicles, burning of articles, disposal of waste, and restrictions on sound pollution as well.

It was further observed by this court that another meeting was held after issuing the said EPL on 25.05.2015 at the auditorium of the Central Environmental Authority with the participation of several public servants including officials from the Environmental Authority, Maharagama Municipal Council and Police and at the said meeting it was proposed to the Petitioner to monitor the conduct of the 4th Respondent by the CEA and Maharagama Municipal Council to make sure that the 4th Respondent does not violate the conditions of the EPL. When the said proposal was made to the Petitioner, the Petitioner did not agree for the said proposal, since the Petitioner was of the view that the said issuance of the EPL was made *ultra vires* by the 5th Respondent, but, this court at this juncture is not inclined to consider the legality of the said issuance of the EPL but is mindful of the steps taken by the authorities referred to above, when considering the extension of the stay order as prayed in paragraph (d) above.

In this regard this court is mindful of the three tests applied in the case of *Duwearachchi V. Vincent Perera (1984) 2 Sri LR 94* when granting interim relief to the effect,

- a) Whether the final relief will be rendered nugatory
- b) Where does the balance of convenience lie
- c) Will irreparable harm be caused to any party'

and observed that, due to the conditions imposed in the EPL and the undertaking given by the 1st Respondent along with the 7th Respondent to monitor the conduct of the 4th Respondent, with regard to the observance of the said conditions, will certainly in favour of the 4th Respondent when considering the 2nd and the 3rd tests referred to above. The first test referred to above will not have any impact on the case in hand, in the absence of direct bearing between the interim relief and the final relief as prayed for.

For the forgoing reasons, this court is not inclined to extend the interim relief as prayed by the Petitioner in paragraph (d) above but, we make order that, the 1st and 7th Respondents to closely monitor the conduct of the 4th Respondent with regard to the observance of the conditions imposed in the EPL dated 28.01.2015 and submit this court with a report by the 1st Respondent in every six months time until the final disposal of this matter or until the said EPL is in operation whichever takes place first.

President of the Court of Appeal

H.C.J. Madawala J

I agree,

Judge of the Court of Appeal