

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

Lanka Healthcare Services (Pvt)
Ltd.,
No. 40/1, Dickman's Road,
Colombo 5.
Petitioner

CASE NO: CA/393/2016/WRIT

Vs.

Sri Lanka Land Reclamation and
Development Corporation,
No. 3, Sri Jayawardenapura
Mawatha,
Welikanda,
Rajagiriya.
And 6 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Kuvera de Zoysa, P.C., with Pulasthi Rupasinghe for
the Petitioner.

Vikum de Abrew, S.D.S.G. for the 1st and 2nd
Respondents.

Hearing on: 25.05.2018

Written Submissions on: 11.06.2018

Decided on: 22.06.2018

Samayawardhena, J.

The petitioner filed this application seeking a writ of mandamus compelling the 1st respondent Sri Lanka Land Reclamation and Development Corporation (and its Chairman and General Manager) to allocate the petitioner the land depicted in Plan 359 marked P3A, and a writ of prohibition prohibiting the 1st respondent to allocate it to anybody else other than the petitioner. The 1st respondent objects even notice being issued on the respondents. Hence this order.

The petitioner's case is predicated on the newspaper advertisement marked P3 published by the Board of Investment of Sri Lanka (BOI) in association with the 1st respondent inviting interested private sector investors to submit proposals to invest and develop a land in extent 4A 1R 37.64P at Kirimandala Mawatha, Narahenpita for housing or mixed development project. The said land, in the advertisement, has not been identified by way of a Plan. The petitioner submits Plan No. 359 marked P3A as the land referred to in the advertisement, which is denied by the respondent. This denial is *prima facie* justifiable as the extent of the land in the advertisement is 4A 1R 37.64P whereas the extent of the land in Plan P3A is 6 acres. According to the respondent the land referred to in the advertisement is a different land.

However there is no proof that the petitioner responded to the said advertisement.

More than 6 months after the said advertisement, the petitioner has submitted an application dated 16.07.2007 to the BOI seeking an approval to set up a hospital at a property situated at Kinsey

Road, Colombo 7 (P4), and this has been approved by the BOI on the same day (i.e. 16.07.2007) subject to conditions (P4A).

More than one year after this approval to set up a hospital at a property situated at Kinsey Road, Colombo 7, the BOI has written to the 1st respondent by P5 stating that *“Now the company (the petitioner) has informed us that they have identified another 06 acre land at Kirimandalamawatha, Nawala, depicted in Plan No. 339, which belongs to the Sri Lanka Land Reclamation and Development Corporation (the 1st respondent). We shall be thankful if you could inform us as to whether the proposed land could be allocated for the above project enabling us to consider this application for the approval of the BOI.”*

This goes to show that the petitioner has not been actuated by the advertisement but on a second thought attempted to shift the location to set up the hospital from Kynsey Road, Colombo 7 to another 6 acre land at Kirimandala Mawatha, Nawala depicted in Plan No.339 (not even Kirimandala Mawatha, Narahenpita depicted in Plan No.359).

P5 has been replied by P6 stating that the 1st respondent *“Sri Lanka Land Reclamation and Development Corporation is agreeable to lease out the necessary land subject to approval by the Cabinet Sub Committee on Investment Facilitation (CSIF) and other necessary approvals. You (BOI) may submit this to CSIF and obtain the necessary approval.”*

According to P6, it is the responsibility of the BOI (and not the 1st respondent) to obtain the approval from the Cabinet Sub Committee on Investment Facilitation. This has not been obtained by the BOI on behalf of the petitioner.

Thereafter the BOI has written P8 to remind the petitioner that “*We refer to the Letter of Approval dated 16th July 2007 issued to you on the above subject (Project to set up a Hospital) and noted that you have not taken any action as yet to enter into the Agreement with the BOI.*” It is noteworthy that this Approval dated 16.07.2007 is in relation to the land at Colombo 7 and not at Kirimandala Mawatha, Narahenpita.

P9 is a letter sent by the 1st respondent to the petitioner stating *inter alia* that “*As instructed by the Secretary, Ministry of Urban Development and Sacred Area Development, we may consider the allocation of land referred therein subject to necessary approvals.*” Further it states “*However a case may take up before the Court of Appeal with regard to the subject property therefore this consideration is subject to the decision of the court and establishment of the ownership.*”

Thereafter the Secretary, Ministry of Urban Development and Sacred Area Development has informed the petitioner by P10 that they have decided to allocate the land depicted in Plan P3A to the petitioner to set up a hospital, and further stated that “*The above land partly belongs to REDECO, which is a subsidiary of Sri Lanka Land Reclamation & Development Corporation which comes under the purview of this Ministry and ownership of other part is presently in dispute and the matter is now pending in the Appeal Court.*”

About 6 months after the said letter the 1st respondent has by P11 informed the petitioner that the allocation of the land is subject to the following conditions: “*1. Legal clearance and revesting of part of the land 2. Necessary approvals from relevant institutions such as BOI, UDA and the Cabinet of Ministers 3. The payment of relocation*

cost 4. Payment of Chief Valuer's valuation for the land 5. Any other terms and conditions prevailing at the time of allocation".

Thereafter by letter P12 dated 26.11.2009 the Chairman of the 1st respondent has informed the petitioner to deposit Rs.5 million as the confirmation fee, and on the following day, i.e. on 27.11.2009 the Secretary, Ministry of Urban Development and Sacred Area Development has by P13 informed the petitioner that "*H.E. the President has prohibited state owned property alienation or transfer to any part during the election period. In view if the above, please treat the Chairman's letter as withdrawn.*" With P13 the matter shall end.

About three years after P13, the petitioner has again agitated the matter and again written to the BOI, Secretary to the new Ministry, i.e. Ministry of Investment & Promotion, under which 1st respondent Sri Lanka Land Reclamation Development Corporation comes, and the new Chairman of the 1st respondent Corporation (vide P14-P22).

The new Chairman of the 1st respondent Corporation by P18 has informed the BOI that "*the land identified by the investor is a part of the lands acquired under Grater Colombo Flood Control and Environmental Improvement Project for Water Retention Purposes*".

This reason has been disputed by the Chairman of the BOI by P21 and requested the 1st respondent to release the land to the petitioner to set up a hospital.

It is thereafter the petitioner has sent P22 to the 1st respondent demanding to take steps to release the land within one week from the date of that letter, and filed this application.

It is elementary that the petitioner must show that he has a legal right to the performance of a legal duty by the party against whom mandamus is sought. (*Mageswaran v. University Grants Commission*¹, *Wannigama v. Incorporated Council of Legal Education*², *Janak Housing (Pvt) Ltd v. UDA*³, *Credit Information Bureau of Sri Lanka v. Messrs Jafferree & Jafferjee (Pvt) Ltd*⁴) The petitioner manifestly fails in this requirement.

However it is the submission of the petitioner that the petitioner has a legitimate expectation in view of the representations made by the 1st respondent that the land would be conveyed to it. By looking at the correspondence referred to above I do not think that the 1st respondent Corporation taken in isolation gave such promises.

Assuming without conceding that the petitioner has a legitimate expectation, can this Court, in the facts and circumstances of this case, issue a writ of mandamus compelling the 1st respondent to convey the land depicted in Plan P3A to the petitioner? The answer shall in my view be negative.

Mandamus cannot be issued when major facts are in dispute. (*Thajudeen v. Sri Lanka Tea Board*⁵, *Dr. Puvanendran v. Premasiri*⁶, *Wijenayake v. Minister of Public Administration*⁷) There is a dispute regarding identification of the land advertised by P3. Even though the petitioner says that any doubt was cleared by subsequent correspondence, it is not so. For instance, according to the

¹ [2003] 2 Sri LR 282

² [2007] 2 Sri LR 281

³ [2008] 2 Sri LR 302

⁴ [2005] 1 Sri LR 89

⁵ [1981] 2 Sri LR 471

⁶ [2009] 2 Sri LR 107

⁷ [2011] 2 Sri LR 247

minutes of one-stop-shop meeting on BOI projects dated 01.11.2012 (annexure to P18), it is stated that "*Representative of SLLRDC (the 1st respondent) stated the land referred to by the investor was not advertised to be allocated for any project.*"

Even if it is to be considered as the land depicted in Plan 359, according to P10, the land does not belong to the 1st respondent. It partly belongs to REDECO, a subsidiary of the 1st respondent (and not to the 1st respondent), and the ownership of the other part is presently in dispute and the matter is pending in this Court. In that backdrop how can the Court issue a mandamus compelling the 1st respondent to convey the land to the petitioner?

"Mandamus will not be issued where the respondent has no power to perform the act sought to be mandated." (Kumarasinghe v. Dayananda Dissanayake⁸) Nor will it be issued "when it appears that it is impossible of performance by reason of the circumstances". (Wannigama v. Incorporated Council of Legal Education⁹)

In any event, the decision to allocate the land, according to P11, has been taken subject to a number of conditions including approval of the Cabinet of Ministers. These conditions have not been fully satisfied and approvals have not been obtained. Mandamus cannot be issued subject to fulfilling of conditions.

"Mandamus will not be granted to compel the performance of some duty which may arise in the future. There must be an existing duty, and an existing right in the petitioner to have it performed." (Mohamedu v. De Silva¹⁰)

⁸ [2001] 2 Sri LR 252

⁹ [2007] 2 Sri LR 281

¹⁰ (1949) 52 NLR 562

I refuse to issue notice and the application of the petitioner is dismissed with costs.

Judge of the Court of Appeal