

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

In the matter of an application for Orders in the nature of Writs of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

A.A. Sumanadasa Adikari  
Erabadu Oya,  
Parakrama Samudraya.

**PETITIONER**

**C.A. (Writ) Application  
No.117/2014**

**Vs.**

1. E.MD.S. Ekanayake  
Divisional Secretary of  
Thamankaduwa,  
Divisional Secretariat,  
Thamankaduwa.
  
- 1A. N.A.A.S. Nissankaarachchi,  
Divisional Secretary of  
Thamankaduwa,  
Divisional Secretariat,  
Thamankaduwa.
  
2. Provincial Commissioner of Lands  
of the North Central Province,  
Office of the Provincial  
Commissioner of Lands,  
Anuradhapura.

3. Commissioner General of Lands  
1200/6, Rajamalwatta Road,  
Battaramulla.
4. A. A. Navaratne Adikari  
No. 398, Jayamini Mawatha,  
Government Housing Scheme,  
New Towan,  
Polonnaruwa.
5. Secretary to the Ministry of Lands  
and Land Development,  
Ministry of Lands and Land  
Development,  
Rajamalwatta Road,  
Battaramulla.
6. L.V. De Silva,  
Government Printer,  
Government Printing Department,  
No118, Danister De Silva  
Mawatha,  
Colombo 08.

**RESPONDENTS**

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**BEFORE** : M.M.A. GAFOOR, J.

**COUNSEL** : Shantha Jayawardena with Chamara  
Nanayakkarawasam for the petitioner.

Anusha Samaranayake D.S.G. for 1<sup>st</sup> to 3<sup>rd</sup>, 5<sup>th</sup>  
and 6<sup>th</sup> Respondents.

Rasika Dissanayake for the 4<sup>th</sup> respondent

ARGUED ON : 18<sup>th</sup> May, 2018

DECIDED ON : 01<sup>st</sup> August, 2018

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M.M.A. GAFOOR, J.

The petitioner in this application is a farmer and the 4<sup>th</sup> respondent is the elder brother of the petitioner. The petitioner claimed that he and his father from 1970 were in possession of the land depicted as Lot Nos.188 and 189 in plan referred to therein situated at No.13, Erabadu Oya, Parakrama Samudraya, Pollonnaruwa and they developed the said land by cultivating paddy and constructing a house.

The petitioner resided on the said land until 1984, after the petitioner's 1<sup>st</sup> wife's separation, he came back to his parents but, he continued to possess and cultivate the same and even though the petitioner's father did not have a permit or a grant. The State authorities and officials also had no objections for him and his father cultivating and developing the land as they were to be alienated to farmers in due course. He further submitted that in 2008 after the

death of the father, the 4<sup>th</sup> respondent succeeded to the petitioner's father's lands and in the meantime the 4<sup>th</sup> respondent illegally obtained a permit and claimed the land including lot Nos. 188 and 189.

The 4<sup>th</sup> respondent is a public servant attached to the Land Commissioner's Department as a field officer. The original permit of the 4<sup>th</sup> respondent is P15 but the said permit has been amended and marked as P34.

The petitioner submitted that the said permits issued to the 4<sup>th</sup> respondent marked as P15 and P34 were illegal on the ground that the said permits have been issued without holding a Land Kachcheri which is required under Section 20 of the Land Development Ordinance and the fact that the 4<sup>th</sup> respondent being a public servant, he is not a fit and proper person to receive the above described land under the Land Development Ordinance.

The Petitioner further submitted that the 1<sup>st</sup> Respondent, the Divisional Secretary has admitted that there were no records in the Divisional Secretariat pertaining to the permit issued to the 4<sup>th</sup> respondent and P15 considered to be fraudulent.

The petitioner in this application is claiming a Writ of Certiorari to quash the Permit P15 later amended as P34 issued to the 4<sup>th</sup> respondent and issue an order in the nature of Writ of Mandamus to issue a permit to the Petitioner under the Land Development Ordinance in respect of lots 188 and 189 referred to in the plan thereof.

The position of the 4<sup>th</sup> respondent is that he prays to set aside the permit issued to him and claiming for a Writ of Mandamus to issue the permit in the name of the 4<sup>th</sup> Respondent

It has been found that there were several serious irregularities arose in the permit that had been issued to the 4<sup>th</sup> respondent. The permit marked as P15 issued to the 4<sup>th</sup> Respondent in 2003 is in respect of Lots 186 and 187.

Then in 2011 the Petitioner had attended the Land Kachcheri under notification and requested a permit in respect of Lots 188 and 189 marked as P20 and he has made some steps to get permit.

The 1<sup>st</sup> Respondent, the Divisional Secretary had cancelled the permit which has been issued to the 4<sup>th</sup> Respondent in respect of lots

186 and 187 on the ground that the 4<sup>th</sup> respondent had not done any development to the specified land.

But the 3<sup>rd</sup> Respondent, the Commissioner General of Lands had found that the 4<sup>th</sup> Respondent had developed the specified land and the 3<sup>rd</sup> Respondent had cancelled the decision of the 1<sup>st</sup> Respondent then the 5<sup>th</sup> Respondent Minister of Lands and Land Development had intervened in the matter and he had directed initially to suspend the order of the 3<sup>rd</sup> Respondent, Commissioner General of Lands but later he ordered and confirmed the decision of the 3<sup>rd</sup> Respondent, the Commissioner General of Lands.

It has been noted that at the initial stage, permit P15 has been issued to the 4<sup>th</sup> respondent for the lots 186 and 187 but later it had been amended and marked as P34 and issued to the 4<sup>th</sup> respondent for the lots 188 and 189. Those are the very lots in respect of which the Petitioner had made application and attended a Land Kachcheri.

These facts are very clear and indicates that the original permit is in respect of lots 188 and 189 were issued without a proper inquiry and a Land Kachcheri. Further they have changed the lots

186 and 187 into 188 and 189 after the attendance of the petitioner for the proper application to the permit.

Further, it is very clear that P15, the initial permit had been issued to the 4<sup>th</sup> Respondent without the Land Kachcheri which is a mandatory requirement under Section 20 of the Land Development Ordinance and where the 4<sup>th</sup> respondent was attached to the Provincial Land Commissioner General Department as the field officer.

Land Development Ordinance states that a permit only can be issued to the persons who are below certain income and a permit cannot be issued to a Public servant. It has been found there are certain irregularities been followed in the issuance of the permit P15.

In terms of document marked as '1R1', the permit has been issued on approval given by the Provincial Authorities in 1994 and that the Provincial Authorities do not have power to grant permit to the 4<sup>th</sup> respondent.

P15 was issued on 2003 but on the face of P15, it is a form printed by the Government Printers in the year of 2005.

In accordance with Section 106 of the Land Development Ordinance the 1<sup>st</sup> Respondent had cancelled the permit issued to the 4<sup>th</sup> Respondent by an ex-parte order marked as 1R3 stating that he had failed to develop the land and this has been notified to the Petitioner by document marked as P23.

It is important to be noted that in view of the document marked as P5, the 1<sup>st</sup> Respondent, the Divisional Secretary has admitted that the permit cannot be issued to the 4<sup>th</sup> Respondent under Land Development Ordinance and also admitted in document marked P7 that the copies of the said permit or the ledger were not available at the Divisional Secretariat.

The permit issued to the 4<sup>th</sup> Respondent marked as P15 and later amended as P34 were not followed the procedures and rules which is mandatorily set out in the Land Development Ordinance and issuance of a permit to a public servant is contrary to law and the 4<sup>th</sup> Respondent cannot be claimed a permit to issue on his name while being a public servant.

Considering the submissions made by the Counsel and the facts and circumstances of this case, this Court allows to quashes the



permit P15, later amended as P34 which has been issued to the 4<sup>th</sup> Respondent by way of a Writ of Certiorari and orders to hold a fresh Land Kachcheri in respect of Lot Nos. 188 and 189 with the participation of the Petitioner and the 4<sup>th</sup> Respondent.

**This Court allows the application without Costs.**

JUDGE OF THE COURT OF APPEAL