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

K.M. Denawaka,
No.5000,
High Level Road,
Naduhena,
Meegoda.
Petitioner

CASE NO: CA/WRIT/330/2016

Vs.

Ceylon Electricity Board,
No. 50,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.
And 8 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Thishya Weragoda for the Petitioner.
Nihal Jayawardena, P.C., with Buddhi Kaluthantri for the 1st-3rd Respondents.
Maithri Amarasighe Jayathilake, S.C., for the 4th-9th Respondents.

Decided on: 03.06.2019

Mahinda Samayawardhena, J.

The subject matter of this application is of grave national importance. It involves construction of a 220 Kilovolt Electricity Transmission Line traversing from Polpitiya Grid Substation at Laxapana Generating Complex to Pannipitiya Grid Substation in the Western Province. The case of the petitioner in short is drawing the Transmission Line over her premises is illegal and arbitrary. The petitioner seeks the following reliefs from Court:

(a) To quash by writ of certiorari the decision of the 1st respondent Ceylon Electricity Board (CEB) marked P4(a) and (b) to have wayleave over the land of the petitioner for the aforementioned purpose;

(b) To prohibit the CEB by writ of prohibition to implement the said decision;

(c) To compel the CEB by writ of mandamus to draw the said Transmission Line through the route depicted in plan marked P5(a) or any other route avoiding the petitioner's premises;

(d) To compel the 9th respondent Central Environmental Authority by writ of mandamus to carry out another environmental impact assessment in addition to the initial environmental examination report already approved.

According to the initial map prepared by the CEB and marked P5(a), the said Transmission Line does not run over the petitioner's premises. However the revised map marked P5(b)

diverted the above route and runs over the petitioner's premises. It is the complaint of the petitioner that this deviation from the original position is unreasonable and irrational and was done for collateral purposes. The petitioner stresses that the route suggested in P5(a) in fact avoids residential areas and predominantly traversing paddy and bare lands, and further says that the ill effects of environmental and socio-economic impact caused by the latter suggestion by P5(b) is greater. I must stress that it is on this basis alone the petitioner presented the case in her petition.

The 1st respondent CEB, the 4th respondent Divisional Secretary and the 9th respondent National Environmental Authority in their objections given extensive explanations with supporting documents why plan P5(b) was decided to be acted upon. These reasons are rejected by the petitioner.

This Court in the exercise of writ jurisdiction cannot decide on administrative or judicial decisions of which facts involved are in dispute. Simply stated, when facts are in dispute writ will not lie. (*Thajudeen v. Sri Lanka Tea Board*[1], *Dr. Puvanendran v. Premasiri*[2], *Wijenayake v. Minister of Public Administration*[3])

Also it is not the task of this Court in exercising writ jurisdiction to consider whether the decision is right or wrong but whether the decision is legal or illegal. (*Kalamazoo Industries Ltd v.*

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[1] [1981] 2 Sri LR 471
[2] [2009] 2 Sri LR 107
[3] [2011] 2 Sri LR 247

Minister of Labour & Vocational Training[4] *Public Interest Law Foundation v. Central Environmental Authority*[5])

Construction of High-Tension Powerlines and its impact, both positive and negative, is a very specialized subject which the Courts are ill equipped to handle in a writ application.

In *Public Interest Law Foundation v. Central Environmental Authority (supra)* the petitioner sought to quash the decision of the Central Environmental Authority approving the construction of the Southern Expressway by writ of certiorari on the basis that there was a failure to analyze or consider reasonable and environmentally friendly alternatives, and the Environmental Impact Assessment Report does not provide proper intelligible and adequate reasons for the rejection of alternatives to the project. By refusing the application, Gunawardena J. *inter alia*, at 333 held:

> *The Court is ill equipped, in any event, to form an opinion on environmental matters-they being best left to people who have specialised knowledge and skills in such spheres. Even if a matter may seem to be preeminently one of public law, the Courts may decline to exercise review because it is felt that the matter is not justiciable, i.e. not suitable to judicial determination. The reason for non-justiciability is that Judges are not expert enough deal with the matter.*

The petitioner in the petition whilst stating that route chage was done for collateral purposes, has cited the person alleged to have

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[4] [1998] 1 Sri LR 235 at 248-249
[5] [2001] 3 Sri LR 330 at 334

politically influenced the authorities to deviate from plan P5(a) to P5(b) by name in the written submissions. This is to attack the decision on the basis of bias. A party cannot make allegations against third parties by name without making the alleged wrongdoer a party to the case at least for notice. Otherwise that will amount to abuse the process of Court for collateral purposes.

The petitioner for the first time in counter objections, tendering a copy of "*Guidelines on Wayleave and Felling or Lopping of Trees*" issued by the 5th respondent Public Utilities Commission marked P17(a), taken up the position that, the 4th respondent Divisional Secretary could not have given permission to wayleave and the recommendations made by the Divisional Secretary marked 1R8(a) and (b) are null and void as they are in violation of item 3 of P17(a). This argument is not clear and not specific. Item 3 of P17(a) has several clauses.

The petitioner in the counter objections also states that no proper inquiry was held in respect of recommending wayleave over the petitioner's residential premises. Documents marked 1R11-1R15 bely this contention.

The petitioner in the counter objections further states that the 9th respondent Central Environmental Authority has not published in the Gazette that the Initial Environmental Report marked P16(b) has been approved as mandated by the National Environmental (Procedure for Approval of Projects) Regulations No.1 of 1993. The petitioner in the written submissions drawing attention to section 23BB(4) of the National Environmental Act

and Regulation 15 of the National Environmental (Procedure for Approval of Projects) Regulations No.1 of 1993 says that it is mandatory that any approval for a prescribed project be published in the Gazette and three national newspapers. The petitioner does not say that the National Environmental Authority did not publish the approved project in three national newspapers. But only complains of non-publication in the Gazette. This is a technical unintentional breach of a provision of a statute which has not caused any prejudice to the petitioner. Hence Court need not quash the decision on that ground. That shall not be taken to mean that the Court condones such acts on the part of the authorities.

In *Seneviratne v. Urban Council, Kegalle*[6] the petitioner, relying heavily on *Manel Fernando v. Jayaratne*[7], sought to quash by certiorari the order of acquisition under the Land Acquisition Act *inter alia* on the basis that Section 2 Notice is bad in law as it does not contain the public purpose. The counsel for the respondents convinced Court that the petitioner was aware of the public purpose for which the land was to be acquired long prior to the publication of Section 2 Notice and therefore no prejudice was caused to the petitioner on the failure to mention the pubic purpose in the Notice. J.A.N. de Silva J. (later C.J.) accepted the submission of the counsel for the respondent and quoted at page 108 the following passage on Judicial Review of Administrative Action by De Smith 5th Edition 1995:

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[6] [2001] 3 Sri LR 105
[7] [2000] 1 Sri LR 112

> *If the applicant has not been prejudiced by the matters on which he relies then the Court may refuse relief even though he has succeeded in establishing some defect. The literal or technical breach of an apparently mandatory provision in a Statute may be so insignificant as not in effect to matter. In these circumstances the Court may in its discretion refuse relief.*

It appears that the petitioner endeavours, as he goes along, to find some procedural impropriety to assail the main decision P4(a) which is sought to be quashed by certiorari. That conduct of the petitioner cannot be countenanced.

Finally I must state that prerogative writs will not be issued as a matter of routine, as a matter of course or as a matter of right. It is purely a discretionary remedy to be granted or denied in the unique facts and circumstances of each individual case. Even if the party applying the writ is entitled to that relief, still it can be denied if the other factors stand against granting of that relief. Other factors will include matters of common benefit as opposed to individual benefit. (*Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura*[8]*, Siddeek v. Jacolyn Seneviratne*[9]*, Edirisooriya v. National Salaries and Carde Commission*[10]*, Selvamani v. Dr. Kumaravelupillai*[11])

The writ of certiorari, writ of prohibition and writ of mandamus sought cannot be granted.

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[8] [1996] 2 Sri LR 70
[9] [1984] 1 Sri LR 83
[10] [2011] 2 Sri LR 221
[11] [2005] 2 Sri LR 99

Application of the petitioner is dismissed with costs.

As agreed, the parties in the connected case, CA/Writ/182/2017 will abide by this Judgment.

Judge of the Court of Appeal