

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

Kapuseekuge Sunil Fernando,
No. 21/16B,
Wasantharama Road,
Wadduwa.
Petitioner

CASE NO: CA/WRIT/215/2015

Vs.

General Manager of Sri Lanka
Railways,
Department of Sri Lanka Railways,
Colombo 10.
And 5 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Janaka Basooriya for the Petitioner.
Manohara Jayasinghe, S.S.C., for the
Respondents.

Decided on: 04.06.2019

Samayawardhena, J.

By document marked X dated 02.11.2010, the Deputy Commercial Superintendent of the Railway Department has allowed the petitioner to maintain a temporary parking area in the premises of the Wadduwa Railway Station for one year from 01.11.2010 on payment of a monthly rental. In that document it has specifically been mentioned that the petitioner shall unconditionally hand over the said parking area whenever it is needed to the Railway Department.

The petitioner has used this parking area to earn money by allowing the railway commuters to park their vehicles such as motor bikes, push bikes etc.

Even though by this informal document, temporary permission has been given to the petitioner (to do a business) only for one year, he has continued to use that area until he got the letter marked X13 dated 20.04.2015 from the Commercial Superintendent of the Railway Department asking the petitioner to hand over the possession of the said parking area to the Railway Master of the Wadduwa Railway Station on or before 20.05.2015 as that area is required to the Railway Department.

The petitioner has filed this application seeking to quash X13 by certiorari and compel the General Manager/Commercial Superintendent of Sri Lanka Railways by mandamus to allow the petitioner to continue to use the parking area as usual.

It is quite obvious that X13 cannot be quashed by certiorari as the said decision is neither illegal nor unjustifiable. By informal document marked X1, the petitioner has been temporarily allowed to use the State land for a period of one year, and

thereafter he has been using it for another around four years (by payment of a monthly rent) without any objection from the respondents. In X1, as I have already stated, there was a condition that the petitioner shall hand over the parking area whenever he has been asked to do. There is no necessity in the facts and circumstances of this case to give him a hearing before he is asked to leave because the arrangement was a temporary one. There is no room for the petitioner to have a legitimate expectation that he could continue to use the State land in the Wadduwa Railway Station premises to carry out a business for a profit forever.

There is absolutely no public duty on the part of the General Manager/Commercial Superintendent of Sri Lanka Railways to allow the petitioner to occupy the said State land to conduct his private business. Nor has the petitioner any legal right to insist on the said officials to do so. Writ will not issue for private purposes.

In *Weligama Multi Co-operative Society v. Daluwatte* [1984] 1 Sri LR 195 at 199 a Full Bench of the Supreme Court stated:

Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest. To be enforceable by Mandamus the duty to be performed must be of a public nature and not of merely private character.

The Writ will not issue for private purposes, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable

by Mandamus which is confined to public duties and is not granted where there are other adequate remedies.

There is no merit in this application.

Application is dismissed with costs.

Judge of the Court of Appeal