

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 Mandamus in terms of Article 140 of the Constitution of Republic of Sri Lanka.

H. K. Ajantha Kumara
No. 49, King Rose Avenue,
(St. Maries Road)
Bambalapitiya.

Petitioner

C. A. Writ Application 100/2017

Vs.

1. The Ceylon Electricity Board
3rd Floor, Sir Chiththampalam A. Gardiner
Mawatha, Colombo 02.
2. Anura Wijepala (Chairman)
3. Gamini Wanasekara (Vice Chairman)
4. Sanath Bandara (Working Director)
5. T. D. S. P. Perera (Member)
6. S. D. A. D. Boralessa (Member)
7. R. Semasinghe (Member)
8. K. P. D. J. G. Kariyawasam (Member)

All are members of the Board of Directors of
Ceylon Electricity Board.

9. Ajith Vithanage
Chief Electric Engineer (Colombo South),
Ceylon Electricity Board,
No. 240,
High-level Road,
Colombo 06.
10. Damith Kumarasiri
The Director General,
Public Utilities Commission,
Level 6, BOC Merchant Tower,
No. 28, St. Michael's Road,
Colombo 02.
11. Amal Edirisuriya
Divisional Secretary,
Divisional Secretariat,
Thimbirigasyaya.
12. The Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: Janak De Silva J.

Priyantha Fernando J.

Counsel:

Nimal Jayasinghe with Nivanthi Thilakaratne for the Petitioner

Maitree Amerasinghe SC for the 1st to 9th and 12th Respondents

Written Submissions tendered on:

Petitioner on 15.10.2018

1st to 9th Respondents on 14.02.2019

Argued on: 19.03.2019

Decided on: 07.06.2019

Janak De Silva J.

The Petitioner is the donee of the land morefully described in the deed of gift no. 3734 dated 30.07.2016 (P1). The Petitioner submitted an application and paid the service connection fees to the 1st Respondent to obtain an electricity connection to the house situated on the said land (P4). He further paid Rs. 15,960/= as the security deposit and service connection charge to the 1st Respondent (P5).

The 11th Respondent, to whom the power has been delegated in terms of the Sri Lanka Electricity (Amendment) Act No. 31 of 2013 to hold inquires regarding disputes that may arise in connection with the supply of electricity, held an inquiry into the application of the Petitioner and by letter dated July 2016 (P6) recommended to supply electricity to the Petitioners premises.

The 11th Respondent submitted his recommendations to the Public Utilities Commission as well for the supply of electricity to the Petitioners premises which was approved (P7). However, the Petitioner claims that he has not yet been supplied with electricity and moves that a writ of mandamus is issued compelling the 1st to 9th Respondents to supply electricity to the Petitioners premises.

The 1st to 9th Respondents do not dispute the material facts. They explain the circumstances leading to the delay in supplying electricity to the premises of the Petitioner and concludes by stating that when the 1st Respondent was attempting to install pylons in the proximity of the Petitioner's premises, the Railways Department had objected to drawing the line across the identified route to the premises of the Petitioner claiming that "the venue of the Petitioner forms part of the railway reservation". They state further that the 1st Respondent has temporarily suspended the process until the matter has been resolved between the Petitioner and the Railways Department.

Section 25(1) of the Sri Lanka Electricity Act No. 20 of 2009 states that a distribution licensee shall on any request by the **owner or occupier** of any premises within the Authorized Area of the licensee connect, supply and maintain the supply of electricity to those premises and connect, supply and maintain the supply of electricity to those premises. The word “occupier” in an act *pari materia*, namely section 33(1) of the Electricity Act, No. 19 of 1950, was interpreted by Vythialingam J. in *Municipal Council of Badulla v. Ratnayake* [(1978-79) 2 Sri.L.R. 141] to mean a lawful occupier and not, for instance, a mere squatter. Hence if there was any evidence that the Petitioner is in fact a squatter on the premises to which the electricity is requested this Court would have had to consider whether a squatter or an unauthorized occupant is entitled to obtain an electricity connection to the land on which he is a squatter or an unauthorized occupant.

However, in the instant case the Petitioner has produced a certified copy of the order made in M.C. Colombo Case No. D/13210/5/14 where the General Manager Railways instituted proceedings in terms of the State Lands (Recovery of Possession) Act against the donor of P1. The said order indicates that the application of the General Manager Railways was dismissed. There is no material before Court on whether any revision application was preferred against the said dismissal.

In the aforesaid circumstances there is no evidence before Court to establish that the Petitioner is a squatter or an unauthorized occupant on the land to which the electricity connection is sought.

I see no valid legal reason for not providing an electricity connection to the Petitioner to the premises described above.

Electricity is no longer a luxury but an essential matter for every citizen to lead a comfortable life. In terms of Article 27(2)(c) of the Constitution the State is pledged to establish a Democratic Socialist Society which includes the objectives of the realization by all citizens of an adequate standard of living for themselves and their families and the continuous improvement of living conditions. The 1st Respondent is under a statutory duty to provide an electricity connection to the owner or occupier of any premises within its Authorized Area provided all the legal requirements are satisfied. Failure to perform the statutory duty of supplying electricity can be

compelled by a writ of mandamus. [*G.C.A. Corea v. The Urban Council Kotte and Others* (62 N.L.R. 60), *Gunaratne and another v. Ceylon Electricity Board and Others* (1991) 1 Sri.L.R. 239].

Accordingly, this Court issues a writ of mandamus compelling the 1st Respondent to supply electricity to the Petitioners premises forthwith. The 1st Respondent will pay the Petitioner a sum of Rs. 50,000/= as costs of this case.

Judge of the Court of Appeal

Priyantha Fernando J.

I agree.

Judge of the Court of Appeal