

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

In the matter of an Application in the nature of Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

B.V.I.M. Jayawardane,
'Suduputha' Transport Service,
Sannasgama, Lellopitiya.

PETITIONER

CA Writ Application No: 185/2019

Vs-

Ceylon Petroleum Corporation,
No.609, Dr. Danister de Silva Mawatha,
Colombo 9.

RESPONDENT

**Before: Yasantha Kodagoda, P.C, J/ President of the Court of Appeal
Arjuna Obeyesekere, J**

Counsel: Ikram Mohammed with Roshan Hettiarachchi for the Petitioner

Vikum De Abrew, Senior Deputy Solicitor General for the
Respondent

Supported on: 4th June 2019

Written Submissions: Tendered by both parties on 6th June 2019

Decided on: 10th June 2019

Arjuna Obeyesekere, J

The Petitioner states that he and his father manage and operate a number of businesses including a filling station at Sannasgama in Lellopitiya, Pelmadulla. By a letter dated 17th October 2017 annexed to the petition marked 'P3', the Petitioner sought the approval of the Respondent to establish a filling station at the Madampe junction on the A17 highway on a land in extent of approximately 50 perches that the Petitioner claimed he owned. The Petitioner had submitted a formal application to the Respondent on 1st January 2018.

By a letter dated 12th June 2018 annexed to the petition marked 'P5', the Acting Marketing Manager of the Respondent had requested the Petitioner to produce a series of documents to establish his title to the said land, including a copy of the Deed, a title report and an affidavit confirming that there are no legal obstacles relating to the said land.¹ This requirement had been complied with by the Petitioner, who together with his father who co-owned the land, submitted an affidavit annexed to the petition marked 'P6(j)' stating as follows:

“කතචත්ත ප්‍රාදේශිය සහා සීමාව තුළ අංක 225 දරණ අවිකල්පත්තන ග්‍රාම නිලධාරී වසමේ අවිකල්පත්තන ගමේ මාදම්පේ හතරමං හන්දියේ ඒ 17 මාර්ගයට මුණලා පිහිටි නිමුල්පිටියේ වත්ත නැමැති ඉඩම සඳහා නීතිඥ සරත් සෙනෙවිරත්න පිටගම්පළගේ මහතා 2016 දෙසැම්බර් මස 30 දින සහතික කල අංක 7064 දරණ ඔප්පුව පිට ඉහත කී ඉඩමේ සම්පූර්ණ අයිතිය හිමිකම බල ප්‍රචාරකාරකම ඉහත කී අපි දෙදෙනා වෙත පවරා ඇති බව ද එදින සිට අද මේ දක්වා නිරවුල්ව හුක්ති විඳින බවද කිසිම හඬයක් නොමැති බවද, මෙයින් ප්‍රකාශ කර සිටිමි.”

It appears from the letters dated 5th July 2018, 10th July 2018 and 9th August 2018 annexed to the petition marked 'P7', 'P8(a)' and 'P8(b)' respectively, sent

¹ යෝජිත ඉඩම සඳහා නීතිමය ගැටළු නොමැති බවට දිවුරුම් ප්‍රකාශයක්

by the Respondent to the Petitioner, that the Respondent had placed strong emphasis on the Petitioner having a clear and unencumbered title to the land on which the proposed filling station was to be established.

By a letter dated 9th October 2018, annexed to the petition marked 'P10', the Respondent had informed the Petitioner that approval had been granted to establish a dealer owned filling station on the land proposed by the Petitioner, subject to the terms and conditions specified therein. It is observed that specific reference had been made to the deed by which the Petitioner had acquired the ownership of the said land in 'P10' as well.

The Petitioner claims that preparations were made to commence construction of the filling station, and that he had ordered the storage tanks required for the station. The learned Senior Deputy Solicitor General however submitted that the Petitioner had failed to submit plans of the proposed station for the approval of the Respondent, as required by condition No.11 in 'P10', thereby demonstrating that construction of the station itself has not commenced.

By a letter dated 1st February 2019 annexed to the petition marked 'P13', the Petitioner had informed the Marketing Manager of the Respondent of the following matters:

“නමුත් හදිසියේම ඇතිවූ ඉඩම් ආරවුලක් නිසා දැනට මා හට පැල්මඩුල්ල දිස්ත්‍රික් උසාවිය මගින් තාවකාලික අතුරු තහනම් නියෝගයක් නිකුත් කර ඇත. එම තාවකාලික අතුරු තහනම් නියෝගය 2019 පෙබරවාරි මස අවසාන වන විට ඉවත් කර ගත හැකි බව මාගේ විශ්වාසයයි. එම නිසා කරුණාකර පිරවුම්හල ඉදිකිරීම සඳහා මා හට ලබා දී ඇති කාලය දිරිස කර දෙන මෙන් ඉතා ගෞරවයෙන් ඉල්ලා සිටිමි.”

The learned President's Counsel for the Petitioner submitted that the reference in 'P13' to litigation relates to partition action No. 5496/P filed in the

District Court, Pelmadulla by some persons claiming ownership to 1/6 of the said land. He stated further that even though the Petitioner was contesting the said action, the Hon. District Judge of Pelmadulla had initially granted an enjoining order on 1st November 2011 and, having heard the Petitioner, had granted an interim injunction preventing the Petitioner from engaging in any form of clearing and construction on the said land, until the final determination of the said action. The learned President's Counsel submitted further that the Petitioner had filed an application dated 18th March 2019 in the High Court of Civil Appeals, Ratnapura seeking leave to appeal against the said order of the Hon. District Judge, but that the said matter is yet to be supported.

In response to 'P13', the Respondent, by a letter dated 18th February 2019 annexed to the petition marked 'P14' had informed the Petitioner as follows:

“ඔබ විසින් ඉහත සඳහන් ස්ථානයේ පිරවුම්හලක් ඉදිකිරීම සඳහා කාලය දීර්ඝ කරන ලෙස ඔබගේ 2019.02.01 දිනැති ලිපිය මගින් අප සංස්ථාවෙන් ඉල්ලා සිටියද, යෝජිත භූමිය සම්බන්ධයෙන් ඔබට එරෙහිව පැල්මඩුල්ල දිසා අධිකරණයේ නඩුවක් පවරා ඇති බැවින්ද, ඔබ විසින් යෝජිත ඉඩම් සම්බන්ධ නඩුව අදාළ දිසා අධිකරණයේ විකාශ වෙමින් පවතින බැවින්ද, පිරවුම්හල ඉදිකිරීම කටයුතු නොකරන ලෙස මෙයින් දන්වා සිටිමු.

ඉහත නඩුව අවසානවීමෙන් පසුව ඔබ විසින් නැවත සංස්ථාව වෙත පිරවුම්හල ඉදිකිරීම සඳහා නව අයදුම්පත්‍රයක් ඉදිරිපත් කළ යුතු අතර, එම නව අයදුම්පත්‍රය නීති අංශය ඇතුළු අනෙකුත් අංශ වලින් සලකා බැලීමෙන් පසුව නව පිරවුම්හලක් ඉදිකිරීමට අනුමැතිය ලබාදීම සම්බන්ධයෙන් සලකා බැලිය හැකි බැව් වැඩිදුරටත් මෙයින් දන්වා සිටිමු.”

The Petitioner states that 'P14' amounts to a cancellation of the approval granted by 'P10'. Aggrieved with the said decision in 'P14', the Petitioner filed this application, seeking a Writ of Certiorari to quash 'P14'. This Court must observe at the outset that even though 'P14' has been signed by the Marketing Manager of the Respondent, the Petitioner has not named him as a

Respondent to this application. It appears to this Court from the averments in paragraphs 33 and 35 of the petition that the Petitioner has equated the decision of the said Marketing Manager to that of the Respondent.

During the course of the oral submissions, the learned President's Counsel for the Petitioner challenged 'P14' on three grounds. This Court would now consider each of the said grounds.

The first ground is that the Respondent had failed to give the Petitioner a hearing prior to issuing 'P14'. Upon a consideration of the correspondence that was exchanged between the Petitioner and the Respondent, and more specifically 'P5', 'P6(j)', 'P7', 'P8a', 'P8b' and 'P10', it is clear to this Court that it was paramount to the Respondent that the Petitioner should have clear title to the land. It is also clear that the unequivocal assurance given under oath by the Petitioner that he is a co-owner of the land with his father and the fact that his father had executed a lease in his favour influenced the decision of the Respondent to grant approval to the Petitioner. The Petitioner is in violation of this important requirement laid down by the Respondent, even though the Petitioner has stated under oath in his affidavit that he had clear title to the said land. Thus, the Petitioner himself informing the Respondent of a land dispute and connected litigation could not have left any doubt in the mind of the Respondent that the title of the Petitioner is encumbered, thus leaving nothing further to be clarified by a hearing. This Court is therefore of the view that the necessity for the Respondent to conduct an inquiry or grant the Petitioner a hearing prior to sending 'P14' did not arise.

The second ground urged by the learned President's Counsel for the Petitioner is that the decision to issue 'P14' should have been taken by the Board of Directors of the Respondent, especially since the approval in 'P10' had been

granted by the Board of Directors. It was the contention of the learned President's Counsel that 'P14' had been issued by the Marketing Manager of the Respondent, without obtaining the approval of the Board of Directors of the Respondent, and therefore his decision in 'P14' is *ultra vires* his powers.

In this regard, this Court must observe that in terms of Section 5B of the Ceylon Petroleum Corporation Act No. 28 of 1961, as amended, the right to import, export, sell, supply or distribute petroleum products is vested with the Respondent. In terms of Section 5E of the said Act, notwithstanding that the exclusive right to sell, supply or distribute petroleum of any class or description is vested in the Respondent, the Board of Directors may, from time to time, as respects petroleum of a particular class or description grant written authority to any person to sell, supply or distribute petroleum of that class or description subject to such terms and conditions as may be determined by such Board. Thus, even though the approval of the Board of Directors is required for the Petitioner to sell petroleum products, the Act does not require the approval of the Board of Directors of the Respondent to withdraw that right.

Be that as it may, although it has been pleaded in paragraphs 33 and 35 of the petition that the decision of the Respondent in 'P14' is arbitrary and *ultra vires*, the Petitioner has not pleaded that the Marketing Manager did not have the authority to issue 'P14' or that the Board of Directors have not approved the said decision. The learned Senior Deputy Solicitor General for the Respondent submitted that the Board of Directors of the Respondent has in fact approved the decision conveyed by 'P14' and that he did not file a copy of such decision prior to this matter being supported as this was not a fact that had been impugned in the petition.

In this regard, this Court observes the following:

- 1) The initial application 'P3' has been addressed by the Petitioner to the Marketing Manager;
- 2) It is the same Marketing Manager who wrote to the Petitioner on behalf of the Respondent, as borne out by 'P5', 'P7', 'P8a', and 'P8b';
- 3) The letter dated 13th August 2018 annexed to the petition 'P9(c)' has been sent by the Petitioner to the said Marketing Manager;
- 4) The formal approval granted by the Respondent by 'P10' has authorised the Marketing Manager to communicate with the Petitioner on its behalf;
and
- 5) The Petitioner himself sent 'P13' to the same Marketing Manager.

In the above circumstances, it is clear to this Court that the Marketing Manager who issued 'P14' is not a stranger to this transaction and therefore, this Court cannot agree with the submission of the Petitioner that the Marketing Manager has acted *ultra vires* his powers when he issued 'P14'.

The final ground urged by the learned President's Counsel for the Petitioner is that the approval granted by 'P10' is due to expire only in July 2019 and that the Respondent has no right to withdraw the approval until then. This Court must reiterate that the absence of a clear title to the land would by itself bring to an end the conditional approval granted by 'P10'. In these circumstances, this Court is of the view that the Respondent's decision to issue 'P14' is not unreasonable or irrational. Furthermore, the Petitioner is yet to submit for the approval of the Respondent, the plans of the proposed filling station, which

demonstrates that the Petitioner is yet to commence construction and may not be able to complete the construction by July 2019. This Court must also observe that no prejudice has been caused to the Petitioner, as he has been permitted by 'P14' to submit a fresh application, once the litigation is over.

In the above circumstances, this Court does not see any legal basis to issue notices on the Respondent. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

Yasantha Kodagoda, P.C, J / President of the Court of Appeal

I agree

A handwritten signature in black ink, appearing to read 'Y. Kodagoda', written over a horizontal line.

President of the Court of Appeal