

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

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

Hettiarachchige Jayasooriya
Unit 2A, Ihala Rathmalketiya,
Kanhapoththawala, Baduluoya.

Petitioner

Case No. C. A. (Writ) Application 63/2015 Vs.

1. N. M. Gunawathie
Divisional Secretary,
Divisional Secretariat, Kandaketiya.
2. Commissioner of Lands
Land Commissioner's Office,
Gregory's Road, Colombo 07.
3. M. K. D. S. Gunawardena
Minister of Lands

Now John Amaratunga
Minister of Lands,
Ministry of Lands and Land Development,
"Mihikatha Medura," Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardenepura Kotte.

Substituted 3rd Respondent

4. I. H. K. Mahanama
Secretary,
Ministry of Lands and Land Development,
"Mihikatha Medura," Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardenepura Kotte.

5. D. M. Jayasundera
Unit 3A, Kottagahayata Niwasa,
Kandapottawa, Baduluoya.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

M.D.J. Bandara for the Petitioner

Chaya Sri Nammuni SSC for 1st to 4th Respondents

P. Agalawatta with Sunil Watagala for the 5th Respondent

Written Submissions tendered on:

Petitioner on 19.06.2019

1st to 4th Respondents on 28.08.2019

5th Respondent on 09.07.2019

Argued on: 29.05.2019

Decided on: 26.09.2019

Janak De Silva J.

The father of the Petitioner Hettiarachchige Piyadasa (Piyadasa) was issued a grant in terms of section 19(4) of the Land Development Ordinance (P1) for the land in dispute. The grantee had nominated his daughter Dayawathie Hettiarachchige Piyadasa as his successor (P8).

The Petitioner claims that the grant P1 has been amended by inserting the name of the 5th Respondent as the owner which has been registered in the land registry (P9) and that upon inquiries he became aware that the transfer was affected by a purported letter given by his father Piyadasa dated 16.10.2002 whereas such a letter was never given by his father.

The Petitioner claims that he became aware of these facts after the 5th Respondent instituted two cases bearing no. L/1746 and L/1747 in the District Court of Badulla in July 2013 to eject him from the corpus in dispute.

The Petitioner has inter alia sought the following relief:

- (a) A Writ of Certiorari quashing the decision of the 1st and 2nd Respondents and/or their decision to substitute the 5th Respondent as the grantee of the corpus and/or grant issued in favour of the 5th Respondent,
- (b) A Writ of Mandamus directing the 1st and 2nd Respondents to hold an inquiry to find out the person who is legally to be substituted as the grantee of the corpus,
- (c) Declare that the purported grant marked P7 in terms of the aforesaid decision is illegal and no force or avail in law.

The grant P1 contained a condition to the effect that the corpus should not be transferred without the prior written consent of the Government Agent. Consequent to section 4 of the Transfer of Powers (Divisional Secretaries') Act No. 58 of 1992 this must be read as a reference to the relevant Divisional Secretary who is the 1st Respondent.

The Respondents state that by letter dated 17.10.2001 (1R1) the grantee Piyadasa informed the 1st Respondent of his wish to transfer the grant P1 to the 5th Respondent who is a nephew and that he has obtained the consent of all his children for this transfer. Piyadasa and his seven children including the Petitioner gave affidavits stating that they have no objections to such transfer (1R2 to 1R9).

The 1st Respondent gave his consent to the transfer by letter dated 16.10.2002 (1R12) after obtaining the views of the Grama Niladhari of 31A Baduluoya who certified that the 5th Respondent is eligible to receive a grant in his name and that the family of Piyadasa has consented to such transfer (1R10) as well as of the relevant Janapada Niladhari (1R11).

Suppression/Misrepresentation of Material Facts

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in *W. S. Alphonso Appuhamy v. Hettiarachchi* [77 N.L.R. 131 at 135,6]:

“The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the *King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns* Although this case deals with a writ of prohibition the principles enunciated are applicable

to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

This principle has been consistently applied by courts in writ applications as well. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R.275], *Collettes Ltd. v. Commissioner of Labour* [(1989) 2 Sri.L.R. 6], *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88], *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360], *Jaysinghe v. The National Institute of Fisheries* [(2002) 1 Sri.L.R. 277] and *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* [(2007) 1 Sri.L.R. 24].

In fact, in *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67] this Court held that if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination.

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

"(1)A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.

(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make that fullest possible disclosure of all material facts within his knowledge.

(3) If there is anything like deception the Court ought not to go in to the merits, but simply say" we will not listen to your application because of what you have done."

The Petitioner did not disclose in the petition any facts of the affidavits given by his father, himself and his siblings consenting to the transfer of the land to the 5th Respondent. Upon being confronted with them in the objections filed by the Respondents, the Petitioner sought to explain them by claiming that his father Piyadasa wanted to get a loan from the 5th Respondent, the 5th Respondent wanted to produce documents to the 1st Respondent and prepared affidavits by Mr. Madugalle, Notary Public to which the 5th Respondent obtained signatures from Piyadasa, his wife and children including the Petitioner. Thereafter the deed of transfer in favour of the 5th Respondent was prepared.

The above facts show that the Petitioner suppressed material facts on the giving of the said affidavits. Court hastens to add that no finding is made on the nature of the affidavits signed by Piyadasa, his wife and children including the Petitioner. Whatever document was signed by them should have been disclosed in the petition as the Petitioner sought to imply therein that the transfer to the 5th Respondent was done for no reason at all.

The application is liable to be dismissed in limine on that ground alone.

Disputed Questions of Facts

Our courts have consistently held that it will not exercise writ jurisdiction where the facts are in dispute [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri.L.R. 471]. The Supreme Court has in *Dr. Puvanendran and another v. Premasiri and two others* [(2009) 2 Sri.L.R. 107, 2009 BLR 65] held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.

A consideration of the case articulated by the Petitioner raises the question of the exact nature of documents signed by Piyadasa, his wife and children including the Petitioner. On the one hand the Petitioner contends that documents were prepared for the purpose of obtaining a loan from the 5th Respondent whereas the Respondents claim that they gave affidavits stating that they have no objections to such transfer.

This then is a disputed question of fact and is a reason by itself for Court to refuse to intervene by way of judicial review.

For all the foregoing reasons, the application is dismissed with costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal