

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

In the matter of an Appeal in terms of Section
49 of the Survey Act No. 17 of 2002

Court of Appeal Case No:
CA /Misc/04/2017

Saliya Wickramasinghe,
No. 262,
Kolonnawa Road,
Wellampitiya.

Respondent-Appellant

-Vs-

1. W.D.C.M. Mahathanthila,
No. 115/4, Shockman Place,
Mirihana,
Nugegoda.

Complainant-Respondent

2. Land Survey Council,
Surveyor General's Office,
P.O. Box 506,
Colombo 05.

Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : V. Kulatunga with Shirat Hassan for the Respondent-Appellant.
Noorani Amarasinghe with Dinesha Lokumarakkhalage instructed by Mrs. Roopasinghe for the 1st Respondent.
Nayomi Kahawita, SC for the 2nd Respondent.

Written Submissions: By the Respondent-Appellant on 26/07/2019
By the Complainant-Respondent on 04/09/2019
By the 2nd Respondent on 11/10/2019

Argued on: 14/10/2019

Judgment on : 15/11/2019

A.L. Shiran Gooneratne J.

The Respondent-Appellant, (hereinafter referred to as the Appellant) has invoked the jurisdiction of this Court to set aside the determination dated 25/09/2017, of the 2nd Respondent, Land Survey Council (hereinafter referred to as the Council) that the Appellant has trespassed into lands belonging to the Complainant-Respondent (hereinafter referred to as the Respondent), and demarcated a roadway over the Respondent's land at the request of one Dulip Kolombage. It is alleged that the Appellant by plan bearing No. 5220, had annexed land allotments marked Lots 2 and 3B of plan No. 2052, without the consent of the Respondent. The Council determined that plan bearing No. 5220 made by the Appellant was defective and the Appellant by certifying such plan discharged his

professional duties contrary to provisions set out in Section 45 (1) (c) (ii) (A), of the Survey Act No. 17 of 2002, (hereinafter referred to as the Act), and was found guilty of professional misconduct.

The Appellant has filed this application under Section 49 of the Act, which states as follows;

“Every person who is dissatisfied with –

- a) any decision of the Council relating to an application by him for registration or the issue of an Annual Practising Licence; or*
- b) any order of the Council under section 47 relating to him,*

may, within thirty days after notice of the decision or order has been communicated to him by the Secretary, appeal to the Court of Appeal against the decision or order, as the case may be.”

When this case was taken up for argument, the learned State Counsel appearing for the Council took up a preliminary objection that this application made in terms of Section 49 of the Act does not envisage an order the Council can make in terms of Section 47 of the Act. In particular, the learned State Counsel has drawn attention to Section 47(f) of the Act and submits that,

the order under reference does not qualify to be *“any appropriate order as to costs”* within the 1st limb of subsection (f) of Section 47, and

the order under reference does not qualify to be “*any appropriate order as to costs or otherwise*” within the 2nd limb of subsection (f) of Section 47, therein, the generic term “otherwise” is submitted to be ‘*ejusdem generis*’ to the classification of any appropriate orders the Council is empowered to make under Section 47(f) of the Act.

The contention of the learned Counsel is that, where generic phrases follow specific phrases the interpretation of the generic phrase should be restricted to the category/ genus to which the specific phrase belongs to and the Court should not give a wider construction to such words unless there is something to show that a wider interpretation is intended.

Therefore, it is contended that;

Firstly,

“the generic term “otherwise” is submitted to be ‘ejusdem generis’ to the classification of any appropriate orders the Land Survey Council is empowered to make under subsection 47(f).

Secondly,

by the application of the ejusdem generis rule, the generic term, ‘otherwise’ has to be construed in the same genus as costs and/ or as something relating to costs or incurring of costs by the Land Survey Council.”

Section 47 of the Act is as follows;

(1) *“Where the Council, after conducting an inquiry in accordance with this Part is satisfied that a registered surveyor is guilty of professional misconduct the Council may, make one or more of the following orders –*

(a) make an order that the registration of the registered surveyor be cancelled and name of such surveyor be removed from the register;

(b) make an order that the registration of the registered surveyor be suspended for a period not exceeding three years;

(c) make an order that the annual Practising Licence issued to a Registered Surveyor be cancelled;

(d) make an order that the annual Practising Licence issued to a Registered Surveyor be suspended;

(e) make an order that the registered surveyor may, for a period not exceeding three years, engage in the practice of land surveying subject to such conditions as the Council may impose;

(f) make any other appropriate order as, to costs or otherwise as the Council considers appropriate.

(2) -----”

In Brindra’s “Interpretation of Statutes” (7th Ed. 1984) at page 339, it is stated that;

“The rule of ejusdem generis is that where general words follow particular and specific words of the same nature, the general words must be confined to the

things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary.”

“The ejusdem generis rule is one to be applied with caution and not pushed too far..... To invoke the application of the ejusdem generis rule, there must be a distinct genus or category. The specific words must apply not to different subjects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus.” (Craies on Statute Law, 6th Ed., p.181)

Section 47 of the Act contemplates one or more orders which could be made by the Council. The Appellant, a registered surveyor was found guilty of professional misconduct after a formal inquiry. In terms of Section 47(f), the Council is empowered to make *“any other appropriate order as, to costs or otherwise as the council considers appropriate”*. Therefore, the Council is empowered to make an order for costs, in terms of the Act. The submission of the learned State Counsel is that *“or otherwise”* preceding the word *“as to costs”*, be read as comprehending only to orders of the same kind related to costs, in other words, the generic term *“otherwise”* should be construed in the same genus and/or category *“as to costs”* and to that extend the specific word costs, be given a restrictive interpretation.

In *Sohli Eduljee Captain Vs. Commissioner of Inland Revenue*, S.C. 2/73-
Income Tax case BRA/BTT/3, Wijayatilake J. cited with approval the case of
National Association of Local Government Officers Vs. Bolton Corporation
1943 A.C. 166 at page 176, where it was held that “the use of the words ‘or
otherwise’ does not bring into play the ejusdem generis principle, for ‘manual
labour’ and ‘clerical work’ do not belong to a single limited genus. The ejusdem
generis doctrine is by no means an absolute one, and if it can be seen from a wider
inspection of the scope of the legislation that the general words ought to be
construed generally, they are so construed notwithstanding that they follow more
particular expressions. The wording of the statute may also show that the general
language is to be construed generally.”

Maxwell on the Interpretation of statutes, 12th Edition, at page 297, states
that, “in the abstract, general words, like all others, receive their full and natural
meaning, and the courts will not impose on them limitations not called for by the
sense or objects of the enactment.” (The emphasis is mine)

In *Rahulan Vs. Attorney General C.A. 101/2002*, the Court, in order to
achieve the objectives of the legislation, attached the widest possible meaning to
the long title and the provisions of the statute.

*The Court is entitled to look at the long title of the Act in order to ascertain the
ends and purposes which Parliament had intended to achieve through that
legislation. It is quite permissible for the Courts to use the long title to ascertain*

the clear and unambiguous meaning of a section. If a section is ambiguous the long title may also be consulted to discover the intention of Parliament in order to resolve an ambiguity. (Maersk (Lanka) Pvt. Ltd. Vs. Minister of Ports and Aviation and Others, (2012) 1 SLR 9)

The exceptions to the rule of *ejusdem generis* may in the words of Francis J. McCaffrey, be stated as below:

1. *If the preceding term is general, as well as that which follows, the doctrine can have no application.*
2. *When the particular and specific words exhaust the whole genus, there is nothing ejusdem generis left, and the general words following must be given a meaning outside the class designated by the particular words.*
3. *There is no place of the rule to apply where the specifically enumerated objects are essentially diverse in character. In this situation the meaning of the general term remains unaffected by its connection with the preceding particular terms and it is given its natural meaning.*
4. *The general term shall not be restricted in meaning by the specific words with which it is associated if the legislative intent is plain to the contrary, Such intent may be gathered from the general object of an Act, its legislative history, the context, Acts in pari materia, and other recognized sources of assistance.*

(P.M. Bakshi, Interpretation of Statutes, 1st Ed. (2011) at page 356)

The preamble of the Survey Act reads as follows;

“An Act to provide for the powers and functions of the Surveyor-General; to regulate the carrying out of the land Surveys; to provide for the establishment of a land Survey Council to regulate the professional conduct of Surveyors; to repeal the land Surveys ordinance and the Surveyors; and to provide for matters connected therewith or incidental thereto.”

In *AG Vs. Prince Ernest Augustus of Hanover* 1957A1 436, Lord Norm observed that *“where there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The courts are concerned with the practical business of deciding a lis; and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the courts business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred.”*

When considering the long title of the Act, one of the main objectives of this statute was “to provide for the establishment of a land Survey Council to

regulate the professional conduct of Surveyors. At the formal inquiry held in terms of Section 45(1) (c) (ii) (A) of the Act, the Council came to a finding that the contested plan bearing No. 5220 was defective and therefore, determined that the Appellant had discharged his professional duties contrary to the said provision of the Act, which amounts to professional misconduct. The Council was well within its statutory limits, when making such order.

The Appellant is dissatisfied with an order made by the Council regarding his professional conduct. A party aggrieved by an order in terms of Section 47 subsection (1) (a) to (e) and/ or under subsection (f) to make any other order as, to costs or otherwise as the Council considers appropriate, can appeal against such decision in terms of Section 49 of the Act. In the circumstances, if the interpretation to the generic and/ or not specific term “otherwise” is to be *ejusdem generis* “to costs”, it would certainly narrow and/ or limit the scope of an inquiry into the professional conduct of a Surveyor, which would be contrary to the intendment of the enacted provision. The purpose of the legislation, *inter alia*, was to regulate the professional conduct of the surveyors. Therefore, a restrictive interpretation to the generic term “otherwise”, in my view would defeat the wider scope and application to deal with surveyors found guilty of professional misconduct.

I am of the view that, the interpretation of the generic term “or otherwise” in Section 47(1)(f), should not be restricted “to costs” but to have a wider

construction which fulfils the general object of the statute and accordingly, I find that the *ejusdem generis* principle does not apply in this case.

The Appellant has urged to set aside the decision of the Council dated 25/09/2017, marked I, on the basis that;

“the 2nd Respondent- Council has failed to carry out the inquiry in accordance with the law, without following the basic principles of natural justice, that the Appellant was not given a fair hearing and not allowed to submit his defence in person or through his representatives required by Section 46 (4) of the Act.”

The main contention of the Appellant is that when making its order the Council failed to carry out the inquiry according to law and is contrary to the principles of natural justice.

In *Gregory Fernando and others Vs. Stanley Perera, Acting Principle, Christ The King National School and others, (2004) 1 SLR 346*, Sri Pavan J. (as he then was) held, that;

“It is vital that fairness demands that a person whose rights would be adversely affected must be given an opportunity for a fair hearing. One would not go to the merits of a case without hearing necessary parties.”

By letter dated 05/07/2017, (at page 212 of the brief) the Appellant was informed to be present before the Council on 21/07/2017, for a formal inquiry.

The said letter also informed the Appellant to bring along all documents and plans relevant to the complaint.

Section 46 of the Act clearly states the manner in which the inquiry should be held by the Council. The Appellant states that he was not given a fair hearing and was not allowed to submit his defence through his representatives as required by Section 48 of the Act. It is observed that by letter dated 13/07/2017, marked 'G', the Appellant has informed the Council that he considers it appropriate for the Council to call his client and also an Attorney at Law, who has been identified by name, to participate at the said inquiry. However, there was no request by the Appellant to call witnesses or to present evidence in any manner before the Council, which was turned down, as alleged. The Council having gone into the merits of the case has given reasons, before arriving at its conclusions.

With reference to the said inquiry, the Appellant by a letter addressed to the Council, dated 21/07/2017, has acknowledged the right of the Council to take an appropriate decision in terms of Section 47 of the Act. However, after a lapse of over 2 months, by letter dated 24/09/2017, the Appellant complains about the procedural impropriety of the said inquiry.

By the said letter dated 21/07/2017, the Appellant, of his own accord, informed the Council that he was awaiting the determination of the inquiry, and did not put in issue any violation of his rights or any procedural irregularity when

conducting the said inquiry. Therefore, agreeing to abide by the said decision of the Council, the Appellant has waived his right to object, by his own conduct.

The Council when considering the merits of this case observed that the Appellant was not certain whether the complainant-Respondent, who owns the land was present at the time, the survey was conducted. The Appellant was also unable to explain as to why the said survey was conducted at the request of a lawyer and has also failed to explain that the land surveyed by him belonged to his client who had title to Lot No. 2. Therefore, taking into consideration the totality of the evidence available, I do not see any reason to interfere with the determination of the Council dated 25/09/2017.

For all the above reasons, the Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL