

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 Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 341/2017

Mannayida Marakkalage Lakshman Priyadharshana,
Mahakalaththawa, Kurundankulama.

PETITIONER

Vs.

- 1) Ruwan Liyanage,
Divisional Secretary,
Divisional Secretariat,
Nuwaragam Palatha – East, Anuradhapura.
- 2) Rohana Sampath Dharmasena,
Provincial Commissioner of Lands,
North Central Province,
Office of the Provincial Commissioner of
Lands, Anuradhapura.
- 3) R.M.C.M. Herath,
Commissioner General of Lands,
1200/6, Rajamalwatte Road,
Battaramulla.
- 4) Gayantha Karunathilake,
Hon. Minister of Lands and
Parliamentary Reforms,
“Mihikatha Madura”,
No. 1200/6, Rajamalwatta Road,
Sri Jayawardanepura, Kotte.
- 5) Hewapathiranage Upul Chandana,
Mihinthu Mawatha, Kalathhawa.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal

Counsel: Shantha Jayawardena with Ms. Thilini Vidanagamage for the Petitioner

Ms. Sabrina Ahmed, State Counsel for the 1st - 4th Respondents

Sumudu Wickremarachchi for the 5th Respondent

Argued on: 21st September 2020

Written Submissions: Tendered on behalf of the Petitioner on 7th September 2020 and 29th March 2021

Tendered on behalf of the 1st - 4th Respondents on 8th January 2021

Tendered on behalf of the 5th Respondent on 27th January 2020

Decided on: 7th June 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner states that in 1977, the State had issued Permit No. 245/254 marked 'P2' to Ananda Lionel Ranasinghe Kumarage under the provisions of the Land Development Ordinance (the Ordinance) in respect of Lot No. 38 in Final Village Plan No. 254. The Petitioner states that Kumarage did not develop the said land by either cultivating the said land or by erecting any structures thereon.

The Petitioner states that in 1990, Kumarage handed over possession of the said land to the Petitioner and that he paid Kumarage a sum of Rs. 75000. It is not disputed that the said handing over of the property to the Petitioner was in violation of the terms and conditions of the Permit 'P2'. The Petitioner states that he initially cultivated short term crops on the said land and erected a permanent structure thereon to construct cement blocks. He states further that since then, he has planted coconut trees on the said land and that he is carrying on a hardware business by the name of 'Lakshan Stores'.

The Petitioner states that Kumarage had subsequently instituted action in the District Court of Anuradhapura to evict the Petitioner from the said land. The Petitioner had however entered into a settlement with Kumarage in terms of which the Petitioner had agreed to pay Kumarage a sum of Rs. 1,500,000 and Kumarage had agreed to have the permit transferred to the Petitioner through the Divisional Secretary. Kumarage had accordingly sent a letter dated 20th September 2006 to the 1st Respondent, the Divisional Secretary of Nuwaragam Palatha – East, informing that he is unable to develop the land and therefore to transfer the permit to the Petitioner.

Kumarage had also handed over part of the said land to the 5th Respondent. In 2008, the 5th Respondent had filed action in the High Court of the North Central Province holden at Anuradhapura seeking a Writ of Mandamus on the 1st Respondent to issue a permit in his favour. That application had however been dismissed by the High Court of the North Central Province holden at Anuradhapura.

With the Petitioner and the 5th Respondent claiming the said land, the Divisional Secretary had summoned the Petitioner, the 5th Respondent and Kumarage for an inquiry – vide letter dated 3rd January 2011 marked 'P8'. The Petitioner states that Kumarage had passed away in 2011, without having nominated a successor or without leaving any heirs. The Petitioner states that although he thereafter requested the 1st Respondent by letter dated 26th April 2012 marked 'P9' to grant him a permit, he did not receive a response from the 1st Respondent.

The 1st Respondent had filed action in 2012 in the Magistrate's Court of Anuradhapura under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended seeking to evict the Petitioner from the above land. By an order delivered in May 2013, the learned Magistrate had directed that the Petitioner be evicted from the said land. Even though the Petitioner had filed a revision application against the said Order, the High Court of the North Central Province holden at Anuradhapura had dismissed the said application in 2014. The appeal of the Petitioner to this Court had been withdrawn after formal notice of this application was issued on the Respondents by this Court.

The Petitioner states that in 2016, the Government had called for applications from those who were in possession of State land without a permit. The Petitioner states that in January 2016, he handed over a duly completed application marked '**P15**'. The Petitioner however states that he did not receive a response to '**P15**', and that he therefore requested the 1st Respondent to hold a Land Kachcheri to select a recipient for the said land.

The Petitioner states that he has been in possession of the said land since 1990 and that he has spent a large sum of money to develop the said land. He states that the State had issued permits in respect of other lands surrounding this land and that no benefit will accrue to the State by taking possession of the said land. He states further that he will be denied of a livelihood if he is evicted from the said land.

It is in the above circumstances that the Petitioner filed this application seeking *inter alia* a Writ of Mandamus directing the 1st – 3rd Respondents to issue the Petitioner a permit in respect of the said land or in the alternative a Writ of Mandamus directing the 1st – 3rd Respondents to hold a Land Kachcheri in respect of the said land. This Court issued formal notice of this application only in respect of the alternative prayer.

The conditions that must be satisfied for a Writ of Mandamus to issue have been clearly set out by the Supreme Court and this Court. The Supreme Court in **Ratnayake and Others vs C.D.Perera and Others**¹ has held as follows:

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties.”

¹ (1982) 2 Sri LR 451.

In Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industries and Commerce and Others² Aluwihare, J held that:

“In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists.”

The learned State Counsel submitted that as Kumarage had violated the terms of the Permit 'P2' by *selling* the land to a third party, the 1st Respondent had issued a notice under Section 109 of the Ordinance to Kumarage and thereafter, acting in terms of Section 106 of the Ordinance had cancelled the said permit in July 2011. She submitted further that after the cancellation, the 1st Respondent took steps to evict the Petitioner as he was in unauthorised occupation of the said State land.

When this matter was taken up for argument, the learned State Counsel submitted that the State has issued the Petitioner a permit in respect of another land and that in terms of the Circular relating to the issuance of permits, the Petitioner is not entitled to the issuance of a further permit in respect of the land that is the subject matter of this application, and hence, no useful purpose would be served by having a Land Kachcheri. Even though the above submission was not supported by the averments in the Statement of Objections, as the learned State Counsel was in possession of the relevant documents and as one of the permits had already been tendered to this Court by the 5th Respondent marked 'SR1', this Court permitted the learned State Counsel an opportunity of filing the said documents by way of an affidavit of the 1st Respondent. This Court also permitted the Petitioner an opportunity of responding to same by way of a reply affidavit. While the affidavit of the 1st Respondent has been tendered on 2nd October 2020, the learned Counsel for the Petitioner has informed this Court that the Petitioner would not be filing an affidavit in response but would address the matters arising therefrom in his written submissions.

² SC Appeal No. 177/15; SC Minutes of 31st August 2018.

In his further affidavit, the 1st Respondent has submitted as follows:

- a) In 2002, the Petitioner has been issued with a permit marked '1R3' in respect of a land in extent of 2A situated in Mahakalaththawa in the same Grama Sevaka Division as the land that is the subject matter of this application is situated;
- b) The name of the Petitioner has been inserted in the land ledger pertaining to such land, as the permit holder – vide '1R3a';
- c) The State has issued to M.M. Gunapala, the father of the Petitioner a permit in respect of a land in extent of 2R which is situated adjacent to the land that is the subject matter of this application and that Gunapala has named the Petitioner as his nominee – vide '1R2';
- d) The Petitioner has been issued a permit in respect of another commercial property situated on the Anuradhapura-Mihinthale Road, coming under the Divisional Secretary area of Mihinthale;
- e) The Land Commissioner General's Department has issued Circular No. 2008/4 dated 20th August 2008 marked '1R4' under the heading "රජය සතු ඉඩම් අනවසරයෙන් අල්ලා ගැනීම පාලනය කිරීම සහ කළමනාකරනය වඩමත් කිරීම". While the said Circular contains provisions relating to the selection of persons to be issued with permits in respect of State land, paragraph 1.3.1(ඇ) reads as follows:

“දැනටමත් දෙමාපියන්ගේ ඉඩම් වල ස්ථිර නිවාස ඉදිකර පදිංචි වී සිටින අය, ඉඩම් හිමි අය, උරුම වීමට ඉඩම් තිබෙන අය, මෙම වසමේ ඉඩම් නොමැති වුවද වෙනත් වසම් වල ඉඩම් තිබෙන අය, ඇතුළුව පදිංචිය කමිකාර්මික හෝ වාණිජ කටයුත්තක් සඳහා කිනම් හෝ ඉඩම් ප්‍රමාණයක් හිමි අයට ඉල්ලුම් කළ නොහැකිය. එසේම රජයෙන් දුන් ඉඩම් විකුණා ඇති හෝ පවරා දී ඇති අයටද ඉල්ලුම් කළ නොහැකිය.”

In the written submissions tendered after the filing of the above affidavit, the Petitioner has admitted that the Petitioner received the permit '1R3'. While the Petitioner admits that he has been nominated by his father in respect of permit '1R2', it has been submitted that his father can cancel the said nomination at any

time. While this is correct, what is relevant at the moment is that in terms of '**1R4**' even a nominee is not entitled to receive any State land in his own right. The Petitioner is silent with regard to him having a commercial land within the Divisional Secretary area of Mihinthale. Thus, the Petitioner is ineligible to receive any further land from the State on three grounds set out in '**1R4**'.

It is therefore clear that even if the Petitioner has developed the land that is the subject matter of this application, the Petitioner does not have a legal right to receive any further land from the State nor are the Respondents under any legal duty to consider an application of the Petitioner seeking a permit in respect of the said land. The Petitioner has therefore failed to satisfy the two requirements that must be satisfied to succeed with a Writ of Mandamus. In these circumstances, I agree with the learned State Counsel that the necessity to have a Land Kachcheri in respect of the said land does not arise.

Before I conclude, I must advert to one matter. It has been repeatedly held by the Supreme Court and by this Court that a party invoking the discretionary jurisdiction of this Court conferred by Article 140 must do so with clean hands. The Supreme Court in **Liyanage & another v Ratnasiri, Divisional Secretary, Gampaha & Others**³ citing the case of **Jayasinghe v The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others**⁴ has held as follows:

“The conduct of the petitioner in withholding these material facts from Court shows a lack of uberrimae fides on the part of the petitioner. When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court.”

In **Fernando, Conservator General of Forests and two others vs. Timberlake International Pvt. Ltd. and another**⁵, the Supreme Court, having held that the conduct of an applicant seeking Writs of Certiorari and Mandamus is of great

³ 2013 (1) Sri LR 6 at page 15.

⁴ 2002 (1) Sri LR 277.

⁵ S.C. Appeal No. 06/2008; SC Minutes of 2nd March 2010.

relevance because such Writs, being prerogative remedies, are not issued as of right, and are dependent on the discretion of court, stated as follows:

“It is trite law that any person invoking the discretionary jurisdiction of the Court of Appeal for obtaining prerogative relief, has a duty to show uberrimae fides or ultimate good faith, and disclose all material facts to this Court to enable it to arrive at a correct adjudication on the issues arising upon this application.”

In paragraph 22 of his petition, the Petitioner has stated that ‘*if he and his family are evicted from the said land they will be denied of a livelihood and a place to live*’. From the material that has now been placed before this Court by the learned State Counsel, it has been established that this averment is clearly false. The Petitioner could not have been unaware that the scheme to issue permits to those who are in unauthorised possession of State land does not apply to the Petitioner as he has already been issued with two permits and is a nominee in respect of a third land. Thus, the Petitioner knowingly has suppressed and misrepresented material facts to this Court. This application is liable to be dismissed on this ground alone.

In the above circumstances, I see no legal basis to grant the relief prayed for. This application is accordingly dismissed.

President of the Court of Appeal