

**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.

**CA (Writ) Application No: 457/2015**

- 1) Dr. Malcolm Stanislaus,  
Chairman.
- 2) Mohan De Silva,  
Vice Chairman.
- 3) Preneetha Perera,  
Secretary.
- 4) Camillus Fernando,  
Treasurer.

Of the Lions Club International Sight First  
Hospital Trust,  
No. 45, Hekitta Road,  
Hendala, Wattala.

**PETITIONERS**

Vs.

- 1) S.G.Wijayabandu,
- 1A) Sirisoma Lokuwithana,  
Secretary,  
Ministry of Education, Western Province,  
Ranmagapaya, Battaramulla.
- 2) P. Sri Lal Nonis.
- 2A) Deepthi Fonseka.

- 2B) Jayasundera Herath Mudiyansele  
Wasantha Ranjith.
- 2C) P.D.I.K.Pranagama,  
Director of Education,  
Kelaniya Zonal Education Office, Makola.
- 3) P.R. Devabandu,  
Assistant Director of Education,  
Kelaniya Zonal Education Office, Makola.
- 4) Quintus Paul,  
Principal, Christu Raja Vidyalaya,  
Hekitta, Wattala.
- 5) R.P.R. Rajapakse.
- 5A) R.M.C.M. Herath,  
Commissioner General of Lands,  
Mihikatha Madura,  
Sri Jayawardenapura, Kotte.
- 6) E.A.R.Renuka.
- 6A) Udupila Arachchige Sujith Harshapriya  
Sisira Kumara.  
Provincial Land Commissioner,  
Western Province,  
Dam Street, Colombo 12.
- 7) M.K.D.S. Gunewardena.
- 7A) Gayantha Karunatileke.
- 7B) S.M. Chandrasekara,  
Minister of Lands,  
Ministry of Lands, Battaramulla.
- 8) W.D.Premalal,  
Divisional Secretary,  
Divisional Secretariat, Wattala.

## **RESPONDENTS**

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

**Counsel:** Saliya Peiris, P.C., with Isuru Balapatabendi for the Petitioners

Thishya Weragoda with M. Gamage for the 1<sup>st</sup> – 3<sup>rd</sup> and 6<sup>th</sup> Respondents

Manohara De Silva, P.C., with Ms. Nadeeshani Lankatilleke and H. Kumarage for the 4<sup>th</sup> Respondent

Ms. Anusha Fernando, Deputy Solicitor General for the 5<sup>th</sup>, 7A and 8<sup>th</sup> Respondents

**Argued on:** 14<sup>th</sup> October 2020

**Written Submissions:** Tendered on behalf of the Petitioner on 28<sup>th</sup> November 2019 and 21<sup>st</sup> October 2020

Tendered on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> and 6<sup>th</sup> Respondents on 30<sup>th</sup> September 2020

Tendered on behalf of the 4<sup>th</sup> Respondent on 29<sup>th</sup> November 2019

Tendered on behalf of the 5<sup>th</sup>, 7A and 8<sup>th</sup> Respondents on 25<sup>th</sup> November 2019

**Decided on:** 11<sup>th</sup> June 2021

**Arjuna Obeyesekere, J., P/CA**

The issue in this application relates to the legality of a representation made in 2004 by the Provincial Council of the Western Province to grant a lease to the Lions Club International District 306/B (**the Lions Club**) in respect of a State land used by the Christu Raja Vidyalaya, Hekitta, Wattala (**the School**) and the subsequent decision taken in 2015 that the land must be handed back to the Ministry of Education of the Western Province.

The facts of this matter very briefly are as follows.

The Petitioners are the Chairman, Vice Chairman, Secretary and Treasurer, respectively, of the Lions Club International Sight First Hospital Trust, a charitable trust established in June 2004 by Deed of Trust marked 'P1'. The Petitioners state further that the primary object of the Trust is to carry on a hospital where *inter alia* patients with eye issues are screened and cataract surgeries are carried out.

The Petitioners state that in 2003, the Lions Club was in need of a land to establish an eye care hospital that they intended building for the benefit of the members of the public in Sri Lanka. The Petitioners state further that the Lions Club had identified a dilapidated abandoned building that was situated on a land adjoining the School for the said purpose. The Petitioners had thereafter made representations to the then Minister of the Interior and Christian Affairs, who was also a member of Parliament for the Gampaha District seeking the release of the said State land for the said purpose. It is evident that the Petitioners were aware from the outset that the said land was State land and had been used for the School.

The Petitioners state that the 4<sup>th</sup> Respondent, the Principal of the School, by letter dated 21<sup>st</sup> October 2003, marked 'P2', had informed the Secretary to the Ministry of Education of the Western Province as follows:

“හැදූල සිංහ සමාජය මගින් පවත්වාගෙන යනු ලබන අක්ෂි රෝහල සඳහා ගොඩනැගිලි පහසුකම් ලබාදීම

උක්ත කාරණය සඳහා ගම්පහ දිස්ත්‍රික් පාර්ලිමේන්තු මන්ත්‍රී අභ්‍යන්තර කටයුතු සහ ක්‍රිස්තියානි කටයුතු පිළිබඳ ගරු අමාත්‍යතුමන් විසින් හැදූල සිංහ සමාජය මගින් අක්ෂි රෝහලක් පවත්වාගෙන යාම සඳහා මෙම වදුහලේ පැරණි දෙමහල් ගොඩනැගිල්ල ලබාදෙන ලෙස ඉල්ලීමක් කර ඇත

එම ඉල්ලීම පරිදි මෙම පාසැලේ පැරණි දෙමහල් ගොඩනැගිල්ල අදාළ කාල සීමාව සඳහා වදුහලේ ඉදිරි පහසුකම් වලට බාධා නොවන අයුරින් ලබා දිය හැකි බව වාර්තා කරමි.”

It would thus be seen that the 4<sup>th</sup> Respondent had only agreed to release an old building of the School and that too only for a limited period of time, provided it did not hinder the future activities of the School. The learned President’s Counsel for the 4<sup>th</sup> Respondent submitted that the 4<sup>th</sup> Respondent never agreed to lease the said land to the Lions Club or to the Petitioners, and that in any event, the 4<sup>th</sup> Respondent does not have the power to agree to the lease of the said land.

The Petitioners state that by letter dated 21<sup>st</sup> April 2004, marked 'P3', the 6<sup>th</sup> Respondent, the Provincial Land Commissioner of the Western Province had informed the Secretary to the Ministry of Agriculture, Land and Transport of the Western Province that the land can be leased to the Lions Club under Section 17(1) of the Land Development Statute No. 7 of 2002 of the Western Province, provided the Board of Ministers of the Western Province approves such a lease.

The Petitioners state that by Memorandum dated 22<sup>nd</sup> April 2004, marked 'P4', the Chief Minister of the Western Province had sought approval from the Board of Ministers of the Western Province to execute a long term lease of the said land to the Lions Club for the purpose of establishing the said hospital. The Chief Minister has pointed out in 'P4' that having consulted the relevant officials with regard to the present student population and the needs of the School, it is clear that the release of the said building together with the land appurtenant thereto,<sup>1</sup> will not be an obstruction to the functioning of the said school. It must be noted that 'P4' does not set out the exact area of land that was sought to be leased nor the entire extent of land that was possessed by the School.

The Petitioners state that pursuant to 'P4', the Board of Ministers of the Western Province at its meeting held on 23<sup>rd</sup> April 2004 had approved the execution of a long term lease of the proposed land for the purpose of establishing the eye care hospital. The Board Minutes have been marked 'P6'.

By letter dated 29<sup>th</sup> April 2004 marked 'P7', the Assistant Secretary, Ministry of Agriculture, Lands, Animal Protection and Health, Irrigation and Transport of the Western Province had informed the 6<sup>th</sup> Respondent that upon consideration of the decision contained in 'P6', the Minister of Lands of the Western Province had approved the handing over of possession of the said land to the Lions Club, and had requested that necessary action be taken.

By letter dated 30<sup>th</sup> April 2004, marked 'P8', the 6<sup>th</sup> Respondent had instructed the 8<sup>th</sup> Respondent, the Divisional Secretary, Wattala to act according to the decision of the Board of Ministers and the instructions contained in 'P7', and to take steps for the preparation of a long term lease of the said land. By letter dated 19<sup>th</sup> May 2004

---

<sup>1</sup> ගොඩනැගිල්ල සහිත ඉඩම කොටස

marked '**P10**', the 8<sup>th</sup> Respondent had granted approval to the Petitioner to commence construction subject to the condition that lease rental must be paid from the date that possession is handed over and that no compensation would be paid in the event the execution of a long lease is rejected.

By his letter dated 26<sup>th</sup> May 2004 marked '**P11**' sent to the Lions Club, the 8<sup>th</sup> Respondent had annexed a sketch of the land that was being handed over. Incidentally, the said sketch had been prepared by the 8<sup>th</sup> Respondent in February 2004, which was prior to the above decision of the Board of Ministers of the Western Province. This Court has not been presented with details of any other steps that the 6<sup>th</sup> and/or 8<sup>th</sup> Respondents may have taken with regard to the execution of a lease.

The Petitioners state that based on the above representations, the Lions Club commenced refurbishment of the said building, and that they incurred a cost of approximately Rs. 30 million in constructing the said hospital which had thereafter been utilized to carry out several charitable projects, including over 10,000 cataract operations without any charge.

Although the Petitioners state that they had requested the Respondents to formalize their occupation of the said land by granting a long-term lease, no such lease has been executed either in favour of the Lions Club or in favour of the Trust. The Petitioners state that several years later they found out that the said school is seeking the release of the building and the land for school development activity. By letter dated 7<sup>th</sup> May 2015 marked '**P27**', the Petitioners had made representations to the Chief Minister of the Western Province that a long-term lease of the said land be executed in their favour.

By letter dated 8<sup>th</sup> October 2015 marked '**P30**', the Secretary, Ministry of Education, Western Province had informed the Secretary of the Lions Club that the said land was required for the development work of the said School and therefore to hand over the said land. This request had been reiterated by letter dated 6<sup>th</sup> November 2015 marked '**P31**'.

It is in the above circumstances that the Petitioners filed this application, seeking a Writ of Certiorari to quash the decisions contained in '**P30**' and '**P31**', and a Writ of

Mandamus compelling the Respondents to grant the Petitioners a long term lease in respect of the said land.

The learned President's Counsel for the Petitioners submitted that the Petitioners have incurred heavy costs in establishing and constructing the said hospital and that such an investment was done due to the representations made by the Board of Ministers of the Western Province that a long term lease of the said land would be executed in their favour and therefore the Petitioners have a legitimate expectation that a lease would be executed. It was also submitted that the hospital has been operating for a long period of time providing yeoman service to the members of the public.

I must state at the outset that for an expectation to be recognized by Court on the basis of a representation made by a statutory authority, such representation must first be clear and unambiguous. In this instance, 'P10' very clearly states that even though the Lions Club can commence construction, that it would not be entitled to any compensation if the lease is refused for whatever reason. Thus, there has not been a promise that a lease will be executed but only a representation to act on a best endeavours basis.

The learned Deputy Solicitor General for the 5<sup>th</sup>, 7A and 8<sup>th</sup> Respondents submitted that the law governing the disposition of State land is the State Lands Ordinance No. 8 of 1947, as amended. Section 2 thereof reads as follows:

*"Subject to the provisions of this Ordinance and of the regulations made thereunder, the President may in the name and on behalf of the Republic of Sri Lanka*

*(2) sell, lease or otherwise dispose of State land;*

*(3) enter into agreements for the sale, lease or other disposition of State land."*

The learned Deputy Solicitor General thereafter drew the attention of this Court to List II (the Reserved List) of the Ninth Schedule to the Constitution in terms of which

*“State Lands and Foreshore except to the extent specified in item 18 of List I”* is with the Central Government.

Item 18 of List I (the Provincial List) sets out the power that a Province has over land, and reads as follows:

*“Land - Land that is to say, rights in and over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement **to the extent set out in Appendix II**”*

Paragraph 1 of Appendix II reads as follows:

*“**State land shall continue to vest in the Republic** and may be disposed of in accordance with Article 33(d) and written law governing this matter.*

***Subject as aforesaid,** land shall be Provincial Council Subject, subject to the following special provisions :—*

*1:2 Government shall make available to a Provincial Council, State land within the Province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilise such State land, in accordance with the laws and statutes governing the matter.*

*1:3 **Alienation or disposition of the State land within a Province to any citizen or to any organisation shall be by the President,** on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.”*

The learned Deputy Solicitor General submitted that while a Provincial Council shall have the power to administer, control and utilise such State land made available to it by the Government, a Provincial Council does not have the power to alienate State land and that, that power continues to remain with the President, who shall act in terms of the State Lands Ordinance.



The above position has been clearly laid down in **The Superintendent, Stafford Estate and two others v Solaimuthu Rasu**,<sup>2</sup> where the Supreme Court, in providing an authoritative analysis on the devolution of State Land in terms of the 13<sup>th</sup> Amendment to the Constitution, held as follows:

*“The 13<sup>th</sup> Amendment to the Constitution refers to State Land and Land in two different and distinct places. In my view the entirety of State Land is referred to in List II (Reserved List) and it is only from this germinal origin that the Republic could assign to the Provincial Councils land for whatever purposes which are deemed appropriate. It is therefore axiomatic that the greater includes the lesser (Omne majus continent in se minus) and having regard to the fact that in a unitary state of government no cession of dominium takes place, the Centre has not ceded its dominium over State Lands to the Provincial Councils except in some limited circumstances as would appear later in the judgment.*

...

***State can make grants absolutely and more often it does so provisionally with conditions attached or by way of leases, permits, licenses as per provisions governing disposition of state lands. Such conveyances can be made by the State to any person/organization entitled to hold land including Provincial Councils. All this partakes of the dominium that the State enjoys in having ownership and its attendant incidents of ownership such as its use and consistent with these characteristics it is pertinent to observe that the Constitution unequivocally in List II and in Appendix II has placed State Lands with the Centre, “Except to extent specified in item 18 of List I” [quoted from List II]. Thus the Constitution as far as State Land is concerned traverses from List II via List I to final destination Appendix II.***

*List II and List I*

*In List II (Reserved) it reads as follows :*

*“State Lands and Foreshore except to the extent specified in item 18 of List I.”*

*In List I (Provincial Council) appearing in item 18 the sentence reads as follows:*

---

<sup>2</sup>[2013] 1 Sri LR 25.

*“Land - Land that is to say, rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II”*

*A perusal of the above two provisions unequivocally points to the fact that State Lands as referred to in List II embraces the comprehensive entirety of the corpus of State Land out of what is carved out Land. It is not just land but land that is to say, rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II”*

....

*Appendix II begins with an unequivocal opener -“State Land shall continue to vest in the Republic and may be disposed of, in accordance with Article 33 (d) and written laws governing the matter. “This peremptory declaration is a pointer to the fact that State Land belongs to the Republic and not to a Province. The notion of disposition of State Land in accordance with Article 33 (d) and written laws governing the matter establishes beyond doubt that dominium over all “State Land” lies with the Republic and not with the Provincial Councils. In fact the relevant portion of Article 33 (d) would read as follows -*

*“33 (d) - to keep the Public Seal of the Republic, and to make and execute under the Public Seal, the acts of appointment of the Prime Minister and other Ministers of the Cabinet of Ministers, the Chief Justice and other Judges of the Supreme Court, such grounds and disposition of lands and immovable property listed in the Republic as he is by law required or empowered to do, and use the Public Seal for sending all this whatsoever that shall pass the Seal.”*

It was therefore submitted that the Board of Ministers of the Western Province could not have decided to grant a lease of the said land to the Lions Club, and that its decision contained in ‘**P4**’ and ‘**P6**’, which the Petitioners are relying on, have been made in excess of authority of the Board of Ministers of the Western Province. The learned Deputy Solicitor General submitted further that the Petitioners cannot claim that they have a legitimate expectation arising out of something done in excess of authority.

As stated in **De Smith's Judicial Review**.<sup>3</sup>

*"In R v. Ministry of Agriculture, Fisheries and Food Ex p. Hamble (Offshore) Fisheries Ltd.<sup>4</sup> Sedley J said that to bind public bodies to an unlawful representation would have the "dual effect of unlawfully extending the[ir] statutory power and destroying the ultra vires doctrine by permitting public bodies arbitrarily to extend their powers." On the other hand, to bind bodies to a promise to act outside their powers would in effect endorse an unlawful act. It must, on this view, be doubtful whether the expectation that a body will exceed its powers can be legitimate."*

This position has very clearly been laid down in **Tokyo Cement Company (Lanka) Ltd. vs. Director General of Customs**<sup>5</sup> where the Supreme Court held that the representation must be *intra vires* for there to be a legitimate expectation.

Similarly, in **Ginigathgala Mohandiramlage Nimalsiri v. Colonel P.P.J. Fernando and others**<sup>6</sup>, Priyantha Jayawardena, J held that:

*"In order to succeed in an application made on the grounds of legitimate expectation, the expectation must be legitimate. Mistakes, decisions based on erroneous factual data or illegality cannot be the basis for a legitimate expectation. A similar view was expressed in Vasana v. Incorporated Council of Legal Education and Others ( 2004 ) 1 SLR 154."*

In **M.R.C.C. Ariyaratne v. and Others v. Inspector General of Police, Police and others**<sup>7</sup> Prasanna Jayewardena, J held as follows:

*"the law, as it presently stands, is that an assurance given ultra vires by a public authority, cannot found a claim of a legitimate expectation based on that assurance."*

---

<sup>3</sup>Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, De Smith's Judicial Review [8<sup>th</sup> Edition, 2018] Sweet and Maxwell, page 703.

<sup>4</sup>[1995] 2 All ER 714 at 731.

<sup>5</sup>(2005) BLR 24

<sup>6</sup>SCFR 256/2010; SC Minutes of 17<sup>th</sup> September 2015.

<sup>7</sup>SCFR 444/2012; SC Minutes of 30<sup>th</sup> July 2019.

In that case, the Supreme Court considered the hardships faced by an individual who *bona fide* relies on an assurance given by a public authority that has done so in excess of authority, and recognised that in such instances, the principle of legality comes into conflict with the principle of certainty. However, the Supreme Court went on to conclude that *“the law as it stands now, is that the illegality of the assurance will defeat the value of certainty which contends that the assurance should be given effect.”*

The learned President’s Counsel for the Petitioners submitted that the Petitioners should have been afforded a hearing prior to **‘P30’** and **‘P31’** were issued. This position would be correct if the representation had been made by a person who had the authority to make such representation. However, that is not the position in this application, and hence I do not see any need for the Respondents to have given the Petitioners a hearing prior to the issuance of **‘P30’** and **‘P31’**.

In the above circumstances, I am of the view that **‘P4’** and **‘P6’** cannot give rise to a legitimate expectation and therefore the decisions contained in **‘P30’** and **‘P31’** are not illegal. The Petitioners are therefore not entitled to the relief prayed for.

Taking into consideration the fact that the Petitioners have been operating a hospital on the said premises which benefits the people of the area for fifteen years or more, this judgment shall not be an impediment to the proper authority considering a request by the Petitioners for a long term lease of the said land or a lesser extent of land limited to the area on which the said building is situated. If such an application is made, the proper authority shall also consider the requirements of the said school, prior to arriving at a decision.

Subject to the above, this application is dismissed, without costs.

**President of the Court of Appeal**