

**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 Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA/Writ Application 226/18**

Orient Pearl Hotels Limited  
No. 335 A, D.R. Wijewardena Mawatha,  
Colombo 10.

**PETITIONER**

**VS.**

1. Cey-Nor Foundation Limited,  
No. 90 (335), D.R. Wijewardena Mawatha,  
Colombo 10.
2. M.H.K. Parनाविथरانا,  
Chairman,  
Cey-Nor Foundation.
3. M.A. Nihal Chandrasiri,  
Managing Director,  
Cey-Nor Foundation Limited.
4. K.D.S. Ruwan Chandra,  
Secretary,  
Ministry of Fisheries and Aquatic  
Resources Development,  
New Secretariate,  
Maligawatte,  
Colombo 10.
5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J. and  
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: P. Radhakrishnan, instructed by S.W. Weerasuriya for the  
Petitioner.

Sabrina Ahmed SC for the Respondents.

Written Submissions on: 27.07.2019 & 25.09.2020 (by the Petitioner).

25.06.2019 & 11.03.2020 (by the Respondents).

Decided on: **02.08.2021**

**MOHAMMED LAFFAR, J.**

The Petitioner in this application has invoked the supervisory writ jurisdiction of this Court under Article 140 of the Constitution, seeking, *inter alia*, the following relief:

- d. A writ of certiorari, quashing the decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents to eject the Petitioner from the premises in question as contained in letter marked P9 of the Managing Director of the 1<sup>st</sup> Respondent dated 09.05.2018.
- f. A writ of mandamus, directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to implement the Cabinet decision granted as per the Cabinet Memorandum No. MFAR/AD/2/10/1/1-(14)-2018 dated 21.02.2018 marked P6.
- g. A writ of prohibition, prohibiting the 1<sup>st</sup> to 4<sup>th</sup> Respondents from granting the leasehold rights of the premises in question to any third party.

When this matter was taken up for argument on 29.04.2021, all learned Counsel moved that the judgment be delivered on the written submissions that have already been tendered on behalf of the respective parties.

The subject matter of this case is a large prime land owned by the 1<sup>st</sup> Respondent Company established under the Conversion of Public Corporations or Government owned Business Undertakings into Public Companies Act<sup>1</sup>, functioning under the Ministry of Fisheries and Aquatic Resources Development, and situated at D.R. Wijewardene Mawatha in Colombo, located in the tourist zone of the Lotus Tower consisting of an extent 2 Roods and 18.24 Perches.

By virtue of the Lease Agreement bearing No. 1834 dated 04.07.1998 attested by P. Chandra Perera, Notary Public marked P2, the Petitioner Company took on lease from the 1<sup>st</sup> Respondent Company the aforesaid subject matter for a period of twenty years from 04.07.1998 to 03.07.2018. As per the said agreement, the Petitioner set up a restaurant and was continuing the management of the same for the tenure of the lease period.

In 2016, the Petitioner made representations to the 1<sup>st</sup> Respondent, Cey-Nor Foundation Limited and the Ministry of Fisheries and requested for an extension of the lease of the said premises in question. Thereafter, a Cabinet Memorandum was preferred by the Minister seeking approval for the grant of lease of the premises in dispute to the Petitioner P6. Accordingly, the Cabinet granted approval for the said premises to be leased out to the Petitioner.

The Petitioner states that, in terms of the said Cabinet approval, a draft lease agreement was submitted to the Hon. Attorney General, and thereafter, the Hon. Attorney General has recommended certain amendments to the terms and conditions of the same.

Subsequently, the 1<sup>st</sup> Respondent, as per the clause 22 of the original Lease Agreement marked P2, dispatched a letter dated 09.05.2018 marked P9 to the Petitioner, directing the latter to hand over the vacant possession of the said premises to the 1<sup>st</sup> Respondent, which reads thus:

*“...This has reference to the lease agreement entered on 4<sup>th</sup> July 1998 with Cey Nor Foundation Ltd and Cey Nor Orient Pearl Restaurant.*

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<sup>1</sup> No. 23 of 1987

*We would like to remind you, the 20 years lease period of the above agreement will be completed on 4<sup>th</sup> July 2018. Accordingly, as per the clause numbers 23 (a) of the lease agreement, the agreement will be terminated on 4<sup>th</sup> July 2018 by expiration of the 20 years period. So we request you to follow the conditions stipulated in the clause number 22 of the above agreement.*

*In addition, I have annexed herewith the letter sent by our Finance Manager on 9<sup>th</sup> April 2018, regarding the outstanding payments to be settled by you to Cey Nor Foundation Limited. As mentioned in the letter, take immediate action to settle the outstanding dues...”*

The Petitioner states that the 1<sup>st</sup> to 4<sup>th</sup> Respondents are engaged in delaying the finalization of the lease agreement and are deliberately withholding the same being submitted to the 5<sup>th</sup> Respondent with ulterior motives to hand over the leasehold rights to a third party.

The Petitioner further states that the purported decision of the 1<sup>st</sup> to 4<sup>th</sup> Respondents in not implementing the Cabinet decision is *arbitrary, unfounded and illegal*.

In a nutshell, the primary position of the Petitioner is that on the basis of ‘*Legitimate Expectation*’, the Petitioner is entitled to an extension to the lease hold rights of the corpus in this case. The Petitioner submits that such legitimate expectation arises out of the initial approval granted by the Cabinet of Ministers by Memorandum dated 21.02.2018 (P6) and the draft lease agreement submitted to the 5<sup>th</sup> Respondent for consideration.

The Respondents submit that though the Cabinet Approval was initially received on 21.03.2018 to lease the land out to the Petitioner, the said decision was not conveyed to the Petitioner by the Respondents. Considering the commercial value of the location of the land in issue, and the losses experienced by the 1<sup>st</sup> Respondent due to the poor performance by the Petitioner in receiving the profit share; subsequently on 02.08.2018 a second decision was reached by the Cabinet to call for Expressions of Interest from any interested parties and thereafter to decide on the granting of the new lease. The Petitioner is not prevented from such bidding of which the procedure is yet to commence.

The Respondents state that the Petitioner has showed profits only for five years of the twenty years of the lease and has therefore caused a considerable loss to the 1<sup>st</sup> Respondent. Thereby, the Petitioner had deliberately and/or willfully neglected to settle the profits on the due dates. The Petitioner was unable to pay even the 40% profit share for those five year period on the due dates. The copies of the reminders dispatched to the Petitioner by the 1<sup>st</sup> Respondent requesting the Petitioner to settle the dues are produced as R4A, R4B, R4C, R4D, R4F, R4G and R4H.

The Respondents further state that the Petitioner is not prevented and/or barred from submitting its interest once the Expressions of Interest are called, and therefore, no prejudice will be caused to the Petitioner.

Moreover, the Respondents categorically asserted in their objections that the lease agreement marked P2 has already been expired at the time of the institution of this action by the Petitioner, and therefore, the Petitioner is an unauthorized occupant of the premises in dispute. Hence, the Petitioner has no *locus standi* to prefer this application.

In these respects, the central questions to be considered in this application are as follows:

1. Whether the Petitioner is entitled to the relief as prayed for on the basis of legitimate expectation.
2. Whether the Petitioner has preferred this application with clean hands.

What is legitimate expectation? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that *it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.*

In ***Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale***<sup>2</sup> the Court of Appeal simply described the principle of legitimate expectation as follows:

*“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”*

Wade discusses the principle of legitimate expectations<sup>3</sup> as follows:

*“...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and government becomes a choice between chaos and coercion.”*

*“...It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimant fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made....” (Page 452).*

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<sup>2</sup> CA/WRIT/328/215, CA Minutes of 19.02.2020.

<sup>3</sup> H.W.R. Wade and C.F. Forsyth, Administrative Law, 11<sup>th</sup> Edition, p.451.

The meaning and scope of the doctrine of legitimate expectation was considered at length in ***Union of India vs. Hindustan Development Corporation***<sup>4</sup>, where it was stated that,

*“Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense.”*<sup>5</sup>

When applying the above stated principles to the instant application, the question that begs an answer is whether a promise or an assurance was given by the Respondents to the Petitioner to lease out the premises in dispute after the expiry of the original lease agreement marked P2. Having scrutinized the documents tendered, it is abundantly clear that the Petitioner totally failed to establish the fact that the Respondents had promised to lease out the said premises to the Petitioner. It is pertinent to be noted that the aforesaid Cabinet decision marked P6 (Cabinet Memorandum) and the draft lease agreement submitted to the 5<sup>th</sup> Respondent for his recommendation were not communicated to the Petitioner. As such, the contention of the Petitioner stating that the said documents marked P6 and the draft lease agreement

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<sup>4</sup> 1994 AIR 988, 1993 (3) SCC 499.

<sup>5</sup> Vide para 28 of the judgment.

dispatched to the 5<sup>th</sup> Respondent amount to a promise and/or assurance given by the Respondents to the Petitioner to execute a fresh lease agreement is unacceptable in law.

Furthermore, in terms of the clause 22 of the lease agreement marked P2, the petitioner unconditionally consented and agreed to handover the vacant possession of the premises in question to the 1<sup>st</sup> Respondent on the expiry of the said lease agreement, which reads thus:

*“On the expiry of the aforesaid period of twenty years and consignment termination of this Agreement, the party of the second part shall handover the vacant possession of “Ceynor Orient Seafood Restaurant” premises to the party of the first part. Failing to handover the vacant possession of Ceynor Orient Seafood Restaurant premises the party of the second part shall be liable to pay Rs. 5,000/- per each day to the party of the first part...”*

In these respects, it is abundantly clear that the Petitioner was well aware of the fact that, upon the expiry of the original lease agreement (after 20 years) he is not entitled to be in possession of the said premises. In the circumstances, the Petitioner legally or reasonably cannot expect the Respondents to execute a fresh lease agreement after the expiry of P2, in the absence of an apparent and expressed assurance by the Respondents.

The letter marked P9, demanding the Petitioner to handover the vacant possession of the premises in suit was dispatched to the Petitioner in terms of the Clause 22 and 23 of the lease agreement marked P2. The document marked P9 is a valid and enforceable one as it was issued in terms of the agreement. Hence, the relief prayed for in paragraph (d) of the prayers to the petition seeking a writ of certiorari against P9 is misconceived in law.

This Court observes that the Cabinet Memorandum dated 21.02.2018 (P6) proposed an extension of the lease at a renewed rate subject to consideration of such agreement by the 5<sup>th</sup> Respondent, Attorney General. However, the Petitioner’s right to occupy the said premises was terminated by operation of law at the expiry of the lease agreement after 20 years on 03.07.2018. The 3<sup>rd</sup> Respondent’s letter marked P9 refers to such expiry and invoke the provisions of the said agreement. As there was no form of contractual authority or



otherwise for the Petitioner to continue in possession and/or occupation, this Court is of the view that the document marked P9 requiring the Petitioner to act in terms of the agreement is valid in law.

The learned Counsel for the Petitioner relied upon the judgment of ***Kurukulasooriya vs. Edirisinghe and Six Others***<sup>6</sup> where it was held that,

*“It would be necessary for the party which claims the benefit of legitimate expectation to show that such expectation arises from a promise or hope given by the authority in question”*<sup>7</sup>

In the instant case, it is apparent that the Respondents have not given promise or hope to the Petitioner that the premises in dispute would be leased out to the latter on the expiry of the agreement marked P2. As aforesaid, *mere expectation, desire or wish of the Petitioner will not amount to a legitimate expectation.*

For the foregoing reasons, this Court is of the considered view that the Petitioner in this case is not entitled to the relief on the principle of legitimate expectation.

Furthermore, it is settled law that a party seeking prerogative relief should come to Court with clean hands. The expression is derived from one of Equity’s maxims - *‘He who comes to Equity must come with clean hands.’*

In ***Perera vs. National Housing Development Authority***<sup>8</sup> the Court of Appeal observed that,

*“It is also relevant to note that the petitioner has submitted to this Court a privilege document which he is not entitled to have in his possession. He has not explained the circumstances under which he came to possess this document. Writ being a discretionary remedy the conduct of the*

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<sup>6</sup> S.C. Application (FR) No. 577/2009, SC. Minute of 01.11.2011.

<sup>7</sup> Vide p. 12 of the judgment

<sup>8</sup> [2002] 3 Sri LR 50.

*applicant is also very relevant. The conduct of the applicant may disentitle him to the remedy.”*

In the case of **Alphonso Appuhamy vs. Hettiarachchi**<sup>9</sup> it was held that,

*“When an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberima fides.”*

The attention of this Court is drawn to the fact that, at the time of the institution of this action on 06.07.2018, the Petitioner was an unauthorized occupant of the premises in dispute on the basis that the lease agreement marked P2 was expired on 03.07.2018. This is a material fact to this action which was willfully suppressed by the Petitioner in his petition. In terms of the clause No. 22 of the lease agreement, the Petitioner agreed to handover the vacant possession of the subject matter. After the expiry of P2, instead of adhering to the said clause 22, the Petitioner, who is in unlawful occupation of the said premises, surreptitiously has instituted this action.

Moreover, the documents marked R4A, R4B, R4C, R4D, R4F, R4G, R4H and P10 substantiate the fact that the Petitioner has not paid profit share of 40% as per the clause 6 (a) of the agreement to the 1<sup>st</sup> Respondent on time, and thereby has breached the said agreement. In these respects, it appears to this Court that the Petitioner has suppressed material facts in the petition and the Petitioner has not come before this Court with clean hands.

It is trite law that the Petitioner in this case should handover the vacant possession of the subject matter to the 1<sup>st</sup> Respondent in accordance with the clause 22 of the lease agreement before the institution of this action on the doctrine of ‘comply and complain’. In this regard, I refer to the case of **Bandara vs. Piyasena**<sup>10</sup>, where it was held that,

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<sup>9</sup> 77 NLR 131

<sup>10</sup> 77 NLR 102.

*“A lessee is not entitled to dispute his landlord’s title. Consequently he cannot refuse to give up possession of the property at the termination of his lease on the ground that he acquired certain rights to the property subsequent to his becoming the lessee and during the period of lease. His duty in such a case is first to restore the property to the lessor and then litigate with him as to the ownership.”*

Besides, it is to be noted that the fact stated in paragraph 11 of the Petition stating that the 1<sup>st</sup> Respondent has passed a resolution to grant the lease of the land and premises in question to the Petitioner, has not been substantiated by the Petitioner with adequate testimonies.

I incline to accept the contention of the Respondents that the Petitioner has not been barred from participating at any future bid, and therefore, no prejudice caused to the Petitioner.

For the foregoing reasons, the Petitioner’s application is dismissed.

The parties will bear their own costs.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**K. K. A. V. SWARNADHIPATHI, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**