

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

In the matter of an Application for Orders 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 No: 132/2018

1. H.K.D. Amarasinghe.
2. Thusara Perera,
No. 638/1, High Level Road,
Gangodawila, Nugegoda.
3. I.R.A. Ananda,
804/1, High Level Road, Nugegoda.
4. N.I.J. Fernando,

1st and 4th Petitioners at No. 803, High Level Road, Gangodawila, Nugegoda.

PETITIONERS

Vs.

1. Central Environmental Authority,
No. 104, Parisara Piyasa,
Robert Gunawardena Mawahta,
Battaramulla.
2. Urban Development Authority,
Sethsiripaya, Battaramulla.
3. Vasanthi Ratnapala,
Municipal Commissioner,
Sri Jayawardenapura, Kotte.
- 3A. Madhura Vithanage,
Mayor, Municipal Council,
Sri Jayawardenapura, Kotte.

4. Board of Investments of Sri Lanka, West Tower, World Trade Centre, Echelon Square, Colombo 1.
5. ECO Transfer Prints (Private) Limited, No. 638, 638/2, High Level Road, Gangodawila, Nugegoda.
6. E-Screen Systems Private) Limited, No. 640/1, High Level Road, Gangodawila, Nugegoda.
7. Hon. Attorney General, Attorney General's Department, Colombo 12.

RESPONDENTS

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

Counsel: Ravindranath Dabare for the Petitioners

Ms. Kanishka De Silva Balapatabendi, Senior State Counsel for the 1st, 2nd, 4th and 7th Respondents

Neville Abeyratne, P.C., with Ms. Kaushalya Abeyratne Dias for the 3A Respondent

Saliya Peiris, P.C., with D. Thabrew for the 5th and 6th Respondents

Argued on: 3rd September 2020

Written Submissions: Tendered on behalf of the Petitioners on 11th February 2020

Tendered on behalf of the 1st, 2nd, 4th and 7th Respondents on 7th August 2020 and 10th September 2020

Tendered on behalf of the 3A Respondent on 13th February 2020

Tendered on behalf of the 5th and 6th Respondents on 4th August 2020

Decided on: 3rd June 2021

Arjuna Obeyesekere, J., P/CA

The Petitioners state that they are residents of Nugegoda. The Petitioners state further that in close proximity to their residence, the 5th and 6th Respondents, which are two limited liability companies, are carrying on a printing business / industry involving sublimation printing, screen printing, heat transfer etc. The Petitioners claim that the said printing industry carried out by the 5th and 6th Respondents have become a serious threat to public health and wellbeing of the Petitioners and other residents around the area due to the improper management of chemicals and hazardous chemical disposal, without following proper waste management mechanisms. The Petitioners claim further that as a result of spillage and improper handling of untreated waters by the 5th and 6th Respondents, the chemicals and hazardous substances have been exposed to underground sources of drinking water and residential wells, making it poisonous and unsafe for the residents to utilise their residential wells for their necessity of water. All these claims of the Petitioner however have been denied by the 5th and 6th Respondents.

The Petitioners allege that the 5th and 6th Respondents:¹

- a) Do not have a proper mechanism for the disposal of waste and other chemical substances;
- b) Have failed to obtain 'Environmental Protection Licenses (EPL);
- c) Have violated regulations in relation to noise pollution;
- d) Have installed exhaust fans which emit hazardous gases;
- e) Cause heavy vehicles to be parked in an improper manner, blocking entryways to the houses of residents;
- f) Have imported new machinery for the purpose of expansion of the said industry without obtaining approval from the 4th Respondent, the Board of Investment (BOI).

¹ Vide petition dated 20th March 2018 and petition dated 3rd October 2019.

The Petitioners state that the 1st Respondent, the Central Environmental Authority, the 2nd Respondent, the Urban Development Authority, the 3rd Respondent, Municipal Commissioner of the Sri Jayawardenepura – Kotte Municipal Council and the 4th Respondent who the Petitioners claim has entered into agreements with the 5th and 6th Respondents, have failed to address their grievances and that the said inaction and/or failure and/or neglect to perform their statutory duty is contrary to the provisions of several domestic and international legal instruments. The 6th Respondent has pointed out that it has not entered into any agreement with the 4th Respondent and that it only engages in trading activity, a position which has not been denied by the Petitioners.

It is in the above factual circumstances that the Petitioners filed this application, seeking *inter alia* the following relief:

- a) A Writ of Mandamus directing the 1st Respondent to act under and in terms of the National Environment Act (as amended) and specifically under and in terms of Sections 10,16,17,22,23,23A,23B,23D,23G,23H,23J,23K,23N,23P,23Q, 23R, 23V, 23X, 23AA, 23CC, 23DD, 23EE, 23FF, 24, 24A, 24B and 24C;
- b) A Writ of Mandamus directing the 2nd Respondent to act under and in terms of the Urban Development Authority Law No. 41 of 1978 as amended and specially under and in terms of Sections 8(a), 8(b), 8(i), 8(p), 8(q), 8(r), 8(s), 8(j), 8(u), 8(v), 8A, 8B, 8F, 8G, 8K, 15, 19C, 21, 28 and 28A of the Urban Development Authority Law No. 41 of 1978 as amended;
- c) A Writ of Mandamus directing the 3rd Respondent to act under and in terms of Sections 42A, 64, 66, 67, 83, 98, 99, 100, 103, 107, 108, 112, 113, 116, 117, 131, 132, 136, 136A, 139, 147, 148, 273, 276, 297, 313, 314 Municipal Councils Ordinance No. 29 of 1947.
- d) A Writ of Mandamus directing the 4th Respondent to act under and in terms of the Greater Colombo Economic Commission No. 4 of 1978, as amended and specially under and in terms of the Sections 3, 16, 17, 20, 20A, 22A, 23, 28 of the Greater Colombo Economic Commission No. 04 of 1978, as amended.

- e) A Writ of Mandamus directing the 1st – 4th Respondents to act under and in terms of the Gazette Notification Nos. 1159/22 dated 2000/11/22 and No. 1533/16 dated 2008/01/25 issued under and in terms of the Section 23A of the National Environmental Act No. 47 of 1980 as amended.
- f) A Writ of Certiorari ordering the cancellation of all the licenses issued on the 5th and 6th Respondents by the 1st – 4th Respondents.

Before I consider the position of the Respondents, I must address two issues that have been raised by the learned Senior State Counsel. I have re-produced in its entirety the Writs of Certiorari and Writs of Mandamus prayed for by the Petitioners in view of the first submission of the learned Senior State Counsel that the relief prayed for by the Petitioners is too wide and too vague. A petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is sought must be specific and should address the concerns of the petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the petitioner. The fact that the relief is vague is an indication that the petitioner is unsure of the allegations that he/she is making against the respondents and makes the task of Court to mete out justice that much harder.

For instance, the Petitioner is seeking a Writ of Mandamus directing the 4th Respondent to comply with Section 3 of the BOI Law, which contains the objects of the 4th Respondent. In the absence of any allegation that the 4th Respondent has not complied with its objects or in the absence of any allegation that the agreement that the 4th Respondent has entered into with the 5th or 6th Respondents is contrary to law, I am at a loss to understand the legal duty that the 4th Respondent owes to the Petitioners to comply with its objects. The position is no different with regard to most of the other Sections referred to in the prayer – Section 16 (general powers of the 4th Respondent), Section 17 (power of the 4th Respondent to enter into an investment agreement), Section 20 (the power of the BOI to exercise certain powers under the laws specified in Schedule C), Section 23 (the requirement for the BOI to comply with directions issued by the Minister) and Section 28 (compulsory acquisition of land). The position is no different when it comes to the relief claimed

against the other Respondents. I am therefore of the view that the relief sought is vague and this Court is not in a position to grant any relief to the Petitioners. In the above circumstances, I am of the view that this application is liable to be dismissed *in limine*.

This brings me to the second submission of the learned Senior State Counsel, which is that even though a Writ of Certiorari has been sought to cancel all the licenses issued to the 5th and 6th Respondents by the 1st – 4th Respondents, the Petitioners have not pleaded a single of the said licenses. It is therefore clear that the Petitioners have filed this application without even finding out whether the 5th and 6th Respondents have been issued with licenses and if so, whether any of the Respondents have acted illegally in issuing the said licenses, or whether the 5th or 6th Respondents have violated the terms and conditions of such licenses.

I am of the view that the decision/s that is/are being impugned must be produced by the Petitioners, thereby affording the Respondents an opportunity of setting out the basis for the issuance of the relevant licenses and also of explaining whether the terms and conditions of the said licenses have been complied with. The decision of the Respondents must also be available for this Court to examine, as this Court is exercising a discretionary jurisdiction conferred by Article 140 of the Constitution, and the Petitioners are not entitled to any relief as of right. The Petitioners cannot expect this Court to quash documents which are not before it. In **Weerasooriya v. The Chairman, National Housing Development Authority and Others**,² Sripavan, J (as he was then) held that Court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the petition. In these circumstances, I agree with the submission of the learned Senior State Counsel that the Petitioners are guilty of *laches* and take the view that this application is liable to be dismissed *in limine*, on this ground, too.

I shall nonetheless consider whether the 5th Respondent has obtained the necessary approvals to carry out its industry, only because the Petitioners have stated that this application has been filed in the public interest.

² CA (Writ) Application No. 866/98; CA Minutes of 8th March 2004; followed in *Hatton National Bank PLC vs Commissioner General of Labour and Others*. [CA (Writ) Application No. 457/2011; CA Minutes of 31st January 2020; per Janak De Silva, J]

By virtue of the 4th Respondent entering into an agreement with the 5th Respondent, approvals under the National Environmental Act are issued by the 4th Respondent with the concurrence of the 1st Respondent. The 4th Respondent has annexed with its Statement of Objections, the letter of approval marked '4R1' dated 24th November 2009, granting the 5th Respondent, approval to '*set up a project to manufacture heat transfer labels for indirect export*'. Subsequently, an Agreement has been entered into between the 4th and 5th Respondents dated 22nd January 2010, marked '4R2', to '*set up/conduct and operate a business for the manufacture of heat transfer labels for indirect export*'.

The 4th Respondent has issued the 5th Respondent the following approvals:

- a) Approval for the factory building at No. 638 and 638/2, High Level Road, Nugegoda – vide '4R4';
- b) Environmental Protection License in respect of the printing of heat transfer labels – vide '4R5';
- c) Environmental Protection License for 2016/2017 – vide '4R6'.

The 4th Respondent has annexed the application dated 20th August 2018 made by the 5th Respondent seeking the renewal of the EPL. A joint inspection between the 1st Respondent and the 4th Respondent has been carried out, to ascertain the suitability of the 5th Respondent to be granted a renewal of the EPL - vide '1R9'. The decision of the Inspection Team, as set out in the 'Inspection Report – EPL Renewal' dated 14th August 2018 marked '4R9', is as follows:

'The inspection was carried by the undersigned officers of BOI and CEA on 02/08/2018. During the inspection no significant environmental impacts were observed. Renewal of EPL can be recommended subject to the previous conditions and the following additional conditions.'

The EPL has however not been issued in view of this application pending before this Court.

It is clear that the 1st Respondent has carried out periodic inspections of the said premises and evaluated the noise levels with the participation of the Petitioners in 2016 and 2017 – vide '5R18', '1R7a' and '1R7b'. While these reports disclose that the maximum noise levels at the premises of the 5th Respondent were below the maximum permissible noise levels, what is important is that the Petitioners have failed to divulge to this Court that the 1st Respondent has acted on their complaints.

It is also clear that in January 2018, the 4th Respondent having examined the site where the 5th Respondent carries on its business, has confirmed that the emissions from the factory is within the stipulated standards – vide '4R8a'. The 4th Respondent has also carried out an assessment in March 2018 on the noise levels at the said premises and have confirmed that '*all measured day and night time noise levels were within their respective Maximum Permissible Noise Levels as per National Environmental (Noise Control) Regulations No. 1 of 1996.*' The 5th Respondent has submitted a further report marked '5R17' based on the measurements taken on 11th November 2019, which confirms the findings that the noise levels are within the permissible levels.

It is also clear from the letter dated 27th November 2017 marked 'P13c' sent to the 2nd Petitioner by the 4th Respondent that the industry being carried out by the 5th Respondent does not require an Environmental Impact Assessment in terms of the Regulations made under the National Environmental Act. It is also clear that the 4th Respondent has acted on the complaints made to it by the Petitioners and have not turned a blind eye or a deaf ear. In addition to having tri-partite discussions between the Petitioners, the 5th Respondent and itself to discuss the grievances of the Petitioners, the 4th Respondent has directed the 5th Respondent to comply with the approvals granted, whenever breaches were seen – vide '4R10a' – '4R10d'. Thus, the Petitioners cannot complain of inaction on the part of the 4th Respondent.

The learned President's Counsel for the 5th and 6th Respondents submitted that the 5th Respondent has in place a system whereby contaminated packaging waste materials are taken from the site by Siam City Cement (Lanka) Limited and thermally destroyed at their plant at Puttalam – vide '4R7' and '4R7a'. Thus, it was his position that no contaminated material is disposed at site.

The learned President's Counsel for the 5th and 6th Respondents submitted further that the 5th Respondent does not carry out on site any activity that generates industrial effluents, and that the 5th Respondent has entered into agreements with third parties for the collection of waste. This is borne out by the report of the Public Health Inspector marked '3R2'. The 5th Respondent has also been granted a 'License for operating a facility for scheduled waste management (generator category)' from 12th January 2018 to 11th January 2019 – vide '1R8'.

The learned President's Counsel for the 3A Respondent submitted that the Public Health Inspector of the Municipal Council of Sri Jayawardenapura - Kotte has carried out a site inspection on 3rd August 2018, and that according to the Report marked '3R2', the site inspection had revealed the following:

- (a) The Environmental Protection License was obtained for the year 2016/2017, but a license for 2018 was not obtained;
- (b) Steps have been taken to dispose the waste water out of the factory;
- (c) Steps were taken to dispose solid waste out of the factory;
- (d) Noise levels were within the parameters permitted;
- (e) Emission of heat generated from the activities are done according to the regulations of the Central Environmental Authority.

Thus, it appears to me that the 5th Respondent has carried out its business having obtained the necessary approvals until 2017/2018, and that the 1st – 4th Respondents have stepped in, whenever necessary, to prevent and/or rectify any breaches on the part of the 5th Respondent.

There is one final matter that I wish to advert to. It was submitted that the 5th Respondent has ceased operations at premises No. 640/1, High Level Road, Gangodawila, Nugegoda subsequent to the 3rd Respondent cancelling the Development Permit granted to the 5th Respondent by letter dated 29th August 2018 marked '3P1(a)'. The 2nd Respondent has thereafter issued letter dated 16th October 2018 marked 'X1' informing the 5th Respondent as follows:

'Accordingly, it is regretted to inform you that your request on renewal of change of use permit for the use of screen print press cannot be considered based on the cancellation of the Development Permit issued under reference number SJ/CMC/BA/S/86/2018 on 21/08/2018 by Sri Jayawardenapura Kotte Municipal Council and Court case under CA (Writ) 132/2018.'

Thus, it appears that in any event proceeding with this application is futile. However, this judgment shall not prevent the 1st – 4th Respondents from acting in terms of the law in the event the 5th Respondent is carrying on any business at the aforementioned premises, without having obtained the necessary approvals from the 1st – 4th Respondents.

Subject to the above, this application is dismissed.

President of the Court of Appeal