

**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 writ of
Certiorari and Prohibition under
and in terms of Article 140 of the
Constitution.*

CA (WRT) Application No: 0455/19

U. W. M. H. Fernando

No. 101/A, Christ King Mawatha,
Thudella,
Ja-Ela.

Vs.

Petitioner

**1. Sri Lanka Land Development
Corporation**

P.O. Box 56,
No.03, Sri Jayewardenepura
Mawatha,
Welikada,
Rajagiriya.

2. Roshan Gunawardena

Chairman,
Sri Lanka Land Development
Corporation,
P.O. Box 56,
No.03, Sri Jayewardenepura
Mawatha,
Welikada,
Rajagiriya.

3. Karunarathne Rajapaksha

Chief Executive Officer,

Sri Lanka Land Development Corporation,
P.O. Box. 56,
No.03, Sri Jayewardenepura Mawatha,
Welikada,
Rajagiriya.

4. L. U. U. Weerasinghe

Security Manager
Sri Lanka Land Development Corporation,
P.O. Box 56,
No.03, Sri Jayewardenepura Mawatha,
Welikada,
Rajagiriya.

5. Minister of Megapolis and Western Development,

Ministry of Megapolis and Western Development,
Sethsiripaya,
Battaramulla.

6. Secretary,

Ministry of Mahaweli Development and Environment,
'Sobadam Piyasa',
No. 416/C/1,
Robert Gunawardana Mawatha,
Battaramulla.

Respondents

Before: Sobhitha Rajakaruna, J
Dhammika Ganepola, J

Counsel: Shantha Jayawardena for the Petitioner
Suranga Wimalasena SSS for the Respondents

Supported on: 17.02.2021

Decided on: 03.03.2021

Dharmika Ganepola, J.

The Petitioner claims that he is the owner of the land in dispute which allegedly consists of a part of high land and a part of low land which remains as a lake. When the Petitioner purchased the said land in 19.06.2019, there had been two houses and cattle farm available in the said portion of high land, which had allegedly been constructed by his predecessors in title. In spite of such facts, the Minister has made an order (marked as P6) under section 2 of the Sri Lanka Land Reclamation and Development Corporation Act No.15 of 1968 (as amended), declaring the land in dispute as a "Reclamation and Development Area", as published in the Government Gazette (Extraordinary) No.870/7 dated 10.05.1995. There is no dispute among parties that the corpus is not within the parameters of the land upon which the said declaration has been made by the Minister.

In terms of section 2A(1) of the said Act no person shall without the written approval of the Corporation, fill or develop in any, manner whatsoever, any extent of land situated within any area of land declared to be "Reclamation and Development Area" under section 2 of the Act. In spite of such facts the direction marked P8 in terms of section 2A(4) of the Act had been issued by the 3rd Respondent claiming that the Petitioner unauthorizedly filled the said land declared to be a "Reclamation and Development Area". Consequently, certificate (P7) in terms of section 20B of the said Act has been issued by the 3rd Respondent declaring the land in issue has been unauthorizedly filled. Afterwards, the 1st Respondent on the basis that the Petitioner has acted in contravention of the said section 2A(1) of the Act, instituted proceedings, the Case Bearing No. 40022/19, by its application dated 28.06.2019 before the Magistrate's Court, Wattala in terms of section 2A(5) of the Act. The 3rd Respondent accordingly sought an order in terms of section 2A(6) of the Act to restrain the Petitioner from filling/developing the land in subject and to direct the Petitioner to demolish all constructions made in the land after the issuance of P6.

The Petitioner claims that the order P6 made by the Minister in terms of section 2 of the said Act published in the said Extraordinary Gazette declaring the land in dispute as a "Reclamation and Development Area" is a *nullity* and *void ab initio*. The Petitioner further states that the Magistrate's Court fixed the above case bearing No.40022/19 for the order without holding an inquiry as contemplated in the S.20A of the said Act and therefore the proceedings and the order, if any made with regard to the said case is illegal.

Accordingly, the Petitioner invokes inter alia the writ jurisdiction of this

court to quash the decision of 1st to 4th Respondents to institute proceedings against the Petitioner in terms of section 2A(5) of the Sri Lanka Land Reclamation and Development Corporation Act No.15 of 1968 (as amended), to significantly the Petitioner does not seek any relief against the said Gazette notification and accordingly the Petitioner does not seek for the writ of certiorari to get the said Gazette notification P6 quashed.

In the body of the petition of the Petitioner challenge the validity of the order marked P6, stating that in terms of the section 2(5) of the above Act, the Minister has no power to declare any area within the coastal zone as a "Reclamation and Development Area" without concurrence of the Minister to whom the subject of Coast Conservation and Coastal Resource Management is assigned. The section 2(5) of the above Act is as follows;

"Nothing contained in this Act shall be deemed to confer on the Minister the power to declare any area within the Coastal Zone as a "Reclamation and Development Area" Without the concurrence of the Minister to whom the subject of Coast Conservation and Coastal Resource Management is assigned."

The Petitioner states that according to the description given in the schedule to the order P6 Northern and the Western boundaries of the subject land are bounded by sea. Therefore, it is alleged that the said land comes within the purview of the coastal zone as describe in the Coastal Conservation and Coastal Research Management Act No.57 of 1981. The Petitioner's contention is that the order marked P6 being an order made without concurrence of the Minister to whom the subject of Coast Conservation and Coastal Reservation Management is assigned, P6 is a nullity and void ab initio. However, it appears that the said Extraordinary Gazette Notification No.870/70 dated 10.05.1995 which declared the land in dispute as "Reclamation and Development Area" had been published prior to the said amendment to the Section 2(5) of the Act introduced by way of Coast Conservation (Amendment) Act No.49 of 2011. Therefore I am of the view that section 2(5) of the Sri Lanka Land Reclamation and Development Corporation Act has no application over the alleged order marked P6. Hence, the Petitioner's argument is baseless and futile.

The Petitioner in paragraph 9 and 18 of the petition states that in any event the high land portion of the Petitioner's land depicted in plans mark P3 and P4 is not a low-lying, marshy, waste or swampy area for

which approval of the 1st Respondent is necessary for filling or developing.

Further more the Petitioner states that the high land portion of the subject land is not a "Reclamation and Development Area" for which approval of the 1st Respondent is required for filling or developing. By plain reading of the section 2 of the Sri Lanka Land Reclamation and Development Cooperation Act it can be emphasize that no restriction has been imposed to declare an area including a high land area appurtenant to the low-lying, marshy, waste or swampy area. The court observed that the scheme of the said Act doesn't provide to declare exactly only a low-lying, marshy, waste or swampy area considering only the outer appearance of the surface of the land. Further more, I see no reason to consider the above argument of the Petitioner. Even though the Petitioner seeks to quash the documents marked P7 and P8, the Petitioner in his petition has failed to mention the valid grounds upon which he challenges the validity of the said documents P7 and P8.

Petitioner claims that he was not served with the copy of the direction marked P8. At this stage it is important to take it consideration of the infect of the certify copies of the field inspection notes along with its type set copy and field inspection report along with photograph marked as R8(a), R8(b), R9(a),R9(b) and R9(c) annexed to the affidavits' of the Chief Executive Officer of the 1st Respondent.

The Petitioner states that the Magistrate's Court has fixed the matter for order without holding an inquiry as contemplated in section 20A of the said Act. Accordingly the Petitioner states that the procedure followed by the Magistrates Court in the said case No. 40022/19 is also *ultra vires* the provision of the said Act. In terms of section 20A(3) of the said Act if on the date specified in the summons the person to whom such summons has been issued duly appears in court and states that he has cause to show against issuing such order the court has the discretion either to proceed forthwith or to get the case fixed for inquiry on a later date. However the Petitioner has filed his written show cause in the registry as directed by the Magistrates' Court. By perusing the journal entries in the relevant case record it appears that on 06.09.2019 when the Learned Magistrate fixed the matter for order, no application on behalf of the Petitioner had been made to fix the matter for inquiry. Also it is noted that there is no refusal for such application by the Learned Magistrate. Therefore this court of the view that the Petitioner has failed to establish that the decision making process of the Learned Magistrate is flawed for illegality or irrationality or procedural impropriety. Therefore Petitioner's argument that instituting proceedings against him before the Magistrate Court (case No. 40022/19) based on the direction marked P8 which was not duly served to him is illegal, fails.

I am of the view that the Petitioner has not made out grounds for any order of the Learned Magistrate becomes susceptible to review by a discretionary remedy of this court. In the circumstances this court takes the view that as prayed or in the petition, this court would not be inclined to issue notices and accordingly we proceed to dismiss the application of the Petitioner.

Judge of the Court of Appeal

Sobhitha Rajakaruna, J.

I agree.

Judge of the Court of Appeal