

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

*In the matter of an application made under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka
for mandates in the nature of Writs of
Certiorari and mandamus.*

CA / WRIT 0169/19

Gamini Ranasinghe
No. 280/1, Garden City,
Galle Road,
Moratuwa.

Vs. **Petitioner**

1. Mr. Rishard Badurdeen,
Minister of Small Industries
Commerce and Trade,
No. 73/1, Galle Road, Colombo. 03

2. Mr. Gayantha Karunatilaka
Minister of Lands and
Parliamentary Reforms, Stage 11,
Sethsiripaya,
Battaramulla.

3. Mrs. W.M.A. Chandra
Commissioner General of Lands
Land Commissioner General's
Department,
No. 7, Gregory's Road, Colombo 07.

4. Divisional Secretary
Divisional Secretariat Moratuwa,
Moratuwa, No. 739, Galle Road,
Moratuwa.

5. Hon. Attorney General
Attorney General's Office,
Colombo. 12

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Pubudu de Silva instructed by Sunanda Randeniya for the Petitioner
Dr. Charuka Ekanayake, State Counsel for the Attorney General

Supported on: 02.02.2021

Decided on: 01.03.2021

Dhammika Ganepola, J.

The facts of the case at hand are as follows. The Petitioner had been involved in the timber industry since 1982 and had established a chip board manufacturing plant in Moratuwa area which required a large quantity of saw dust. Upon the request of the Petitioner, the 4th Respondent by his letter dated 05.04.2005 (P12) had granted the Petitioner a temporary permission to store the required materials in the buildings available in the land in dispute and to use the access road both of which referred to in the letter P12 mentioned above.

Later, the 4th Respondent by his letter dated 10.06.2005 (P13) informed the Petitioner that he has no objection with regard to the Petitioner carrying out the proposed project in the land in dispute on a long term lease through the Industrial Development Board or Department of Handloom Industry, provided the Petitioner handovers the vacant possession of land and buildings referred to above. Irrespective of the request of the 4th Respondent by way of P13, it appears that the Petitioner had failed to hand over the vacant possession of the land and building back to the 4th Respondent.

However, the Petitioner in his Petition states that even though the Petitioner has invested approximately Rs. 72 million in the said business and possessed the said property for business purposes, the 3rd and 4th Respondents have wrongfully failed to enter into a long term lease agreement with the Petitioner as initially promised and/or represented and/or held out to the Petitioner in breach of the Petitioner's legitimate expectation. Subsequently, the Petitioner had received the notice dated 29.03.2017 from the 4th Respondent in the form A of the State Lands (Recovery of Possession) Act No. 7 of 1979, requiring him to vacate and deliver the vacant possession of the premises above mentioned. Consequently, the 4th Respondent had filed the application bearing No.61723 before the Magistrate Court, Moratuwa in

terms of the said Act in order to evict the Petitioner from the property in subject, upon the ground that the Petitioner is in unlawful occupation. However, the learned Magistrate by his order dated 20.07.2018 has rejected the said application stating that the Petitioner held a written permission to remain in the subject matter.

Later, the 4th Respondent by his letter dated 30.01.2019 (P22) has terminated the said temporary permission granted to the Petitioner and directed him to handover the vacant possession of the subject matter to the relevant Grama Niladari of the area. Petitioner claims that the purported termination of the permission by way of P22 is null and void. Therefore, seeks to invoke jurisdiction of this court to quash the said letter P22 terminating leave and license granted to the Petitioner and the quit notice P23 issued in terms of the State Lands (Recovery of Possession) Act, by way of writ of certiorari.

Both Counsels were heard in support of the application. The Petitioner's contention is that since he had a legitimate expectation to obtain a long-term lease to the property in dispute, the Petitioner is entitled to the above-mentioned reliefs sought. The Petitioner further states that he has brought immense environmental and economic benefits to the country since 2004 with the consent and occurrence of the relevant state authorities and that he has incurred an expenditure in excess of Rs.72 million up to date through the said project in expectation of a long-term lease to the said land.

In terms of the law relating to judicial review, the doctrine of legitimate expectation has evolved from the context of the principles of natural justice. Where some boon or benefit has been promised by an official, such boon or benefit may be legitimately expected by those who have placed their trust in the promise of the official. It would be unfair to dash those expectations without at least granting the person affected an opportunity to show the official why his discretion should be exercised in a way that fulfils his expectation. (H.W.R.WADE & C.F.FORSYTH ADMINISTRATIVE LAW, 10th edition, page 446)

It is stated in the Privy Council decision of **The United Policyholders Group Vs. AG of Trinidad and Tobago (2016 1WLR 3383 at para.37)** as follows;

"In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts."

Accordingly, the matters involved in this case must be considered in light of the principle discussed above. Petitioner claims that the 4th Respondent has made a

proposition granting him permission to store raw material in the land in subject and to use the access road referred upon which the Petitioner has reasonably relied. Therefore, Petitioner's contention is that he has a legitimate expectation of a long-term lease to the property. However, the point to be noted is that the 4th Respondent by said letter P12 dated 05.04.2005, has only granted the Petitioner with a "temporary permission" to store such raw material in the land in issue and to use the access road referred, that also only upon the request of the Petitioner. For easy reference the averment referred to above in P12 is reproduced below;

".....රජයේ ඉඩම් තුළ පිහිටා ඇති යෝජිත ගොඩනැගිලි වල, ඉහත නිෂ්පාදනය සඳහා අවශ්‍ය අමු ද්‍රව්‍ය ගබඩා කර තැබීමටත් එම අනුරේඛනයේ දක්වා ඇති ප්‍රවේශ මාර්ගය පාවිච්චි කිරීමටත්, ඔබගේ ඉල්ලීම පරිදි තාවකාලිකව අවසරය ලබාදෙමි."

The word "temporary"(තාවකාලිකව) used in the letter P12 itself indicates that the permission granted in terms of P12 was just a short-term permission. Therefore, the Petitioner had no room to hold a legitimate expectation of a long-term lease.

By letter P13 dated 10.06.2005, the Petitioner was directed to handover the vacant possession of the premises to the relevant Grama Niladhari of the area. The letter also refers to the possibility and the willingness of the 4th Respondent to enter into a long-term lease agreement with the Petitioner, upon the Petitioner handing over the vacant possession of the property in dispute as suggested. For easy reference the portion indicated above is reproduced below;

"යෝජිත ව්‍යාපෘතිය කාර්මික සංවර්ධන මණ්ඩලය හෝ ජේශ කර්මාන්ත දෙපාර්තමේන්තුව මගින් දීර්ගකාලීන බදු පදනම යටතේ ඉදිරි කාලයෙදී පවත්වාගෙන යාම පිළිබඳ මාගේ විරුද්ධත්වයක් නොමැත. ඒ සඳහා ප්‍රථමයෙන් කළ යුතුව ඇත්තේ උක්ත ඉඩම සහ ගොඩනැගිලි නිරවුල්ව ජේශ කර්මාන්ත දෙපාර්තමේන්තුව වෙත භාර දීමය. ඉන් අනතුරුව ඔබගේ අවශ්‍යතාවය ඉටුකර ගත හැකි වනු ඇත."

This Court need to take into consideration what the Petitioner has been told and/or was led to believe by the 4th Respondent. Mere existence of an expectation is not sufficient. Such expectation also must be legitimate. An expectation to be a legitimate one, it must be found upon a promise or practice. In the case of **Ranasinghe Bandara vs. The Director, District Land Reform Commission and Others (Case No. CA.(Writ) 233/2017 decided on 17.06.2019)**, Janaka De Silva J. with reference to Clive Lewis, Judicial Remedies in Public Law, 5th Ed,248 (South Asian Edition) states as follows;

"Such legitimate expectations may arise where a public authority has made a clear, unqualified and ambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified and unambiguous representation was made."

It is clear on the surface of the document P13 that the permission granted by the 4th Respondent was conditional that was required to be fulfilled prior entering into a lease agreement. Therefore, the Petitioner definitely could have had the knowledge that he would only be entitled to a temporary permission and that further actions had to be taken in order to succeed a long-term lease from the Petitioner at the time of the investment. Until the said condition was fulfilled by the Petitioner, the Petitioner had no right to hold a legitimate expectation to expect a benefit from the 4th Respondent.

In **Galappaththi vs. Secretary to the Treasury 1996 (2) SLR 109 at 114**, Ranaraja J. in the Court of Appeal held that, a claim by a Petitioner that he has a legitimate expectation of receiving a benefit based on an assurance given to him by a public authority, cannot succeed if he has breached a condition specified in that assurance as one with which he must comply in order to receive the benefit.

Furthermore, though the Petitioner states that he has invested approximately about Rs. 72 Million in the alleged project, it appears that some of the expenditures (environmental protection licence, electricity and water connections etc) he claims were incurred by him subsequent to receiving the temporary permission in issue. Though he was accorded with an opportunity to enter into a long term lease agreement with the 4th Respondent by way of the letter P13, the Petitioner has failed to make use of the same or at least to make an attempt to receive the same.

Since, the Petitioner cannot claim legitimate expectation on the foregoing reasons, the temporary permission which was given to the Petitioner could be terminated by the 4th Respondent at any time. Therefore, I see no reason to quash the said letter of termination P22 dated 30.01.2019. The Petitioner was served with a quit notice in form A of the State lands (Recovery of Possession) Act No 7 of 1979 marked as P23 followed by the said letter of termination P22. Petitioner's contention is that the quit notice marked P23 is void and/or not enforceable in law as well since it violates his legitimate expectation. However, in a situation where the Petitioner has failed to satisfy this court of an existence of a legitimate expectation in his favour, said argument fails as well.

Apart from stating that the issuance of the said quit notice is in violation of the Petitioner's legitimate expectation the Petitioner has also claimed that the said issuance of the quit notice by the 4th Respondent is unreasonable and/or illegal and/or mala fide and /or capricious and/or contrary to the principles of natural justice. However, the Petitioner has failed to reveal the grounds upon which he claims so. Furthermore, the Petitioner is not impugning the vires on the part of the issuance of the quit notice marked as P23 on any lawful grounds.

Due to the aforementioned reasons, I take the view that the Petition of the Petitioner should be dismissed *in limine* as the Petitioner has failed to make out a prima facie case for issuance of notice. Therefore, I proceed to dismiss this application.

Judge of the Court of Appeal

Sobhitha Rajakaruna, J.

I agree.

Judge of the Court of Appeal