

**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.

CASE NO: CA/WRIT/40/19

Withanage Don Nimal Suriyasena
No. 22, Dharmarama Vijerama Mawatha,
Pitaramba,
Benthota.

PETITIONER

Vs.

1. National Housing Development
Authority,
P.O. Box No. 1826,
Sir Chithampalam A. Gardiner
Mawatha,
Colombo 2.
2. M.S. Weerasinghe,
General Manager,
National Housing Development
Authority,
P.O. Box No. 1826,
Sir Chithampalam A. Gardiner
Mawatha,
Colombo 2.
3. H.H. Leelananda,
Deputy General Manager,
National Housing Development
Authority,
P.O. Box No. 1826,

Sir Chithampalam A. Gardiner
Mawatha,
Colombo 2.

4. Himali Gunasinghe,
Manager,
Colombo City South Officer,
Mannin Town Housing Scheme,
No. 280/11, Elvitigala Mawatha,
Colombo 8.
5. W.D. Chandrakanthi Benuka,
A, 1/3, Housing Scheme,
Danister De Silva Mawatha,
Colombo 9.
6. Hon. Attorney General,
Attorney General's Department.
Colombo 12.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. and**
S. U. B. KARALLIYADDE, J.

Counsel: Nimal Jayasinghe for the Petitioner.

Madubashini Sri Meththa, S.C., for the 1st to 4th and 6th
Respondents.

P. Kenneth E. Perera for the 5th Respondent.

Argued on: 12.11.2021.

Written Submissions on: 29.11.2021 (by the Petitioner)
10.12.2021 (by the 5th Respondent)

Decided on: 02.02.2022

MOHAMMED LAFFAR, J.

The Petitioner in this application is seeking a mandate in the nature of writ of *Certiorari* to quash the decisions dated 25.10.2016 (marked as P10), 22.09.2016 (marked as P11) and dated 14.01.2019 (marked as P13) made by the 1st Respondent.

The Petitioner is also seeking a mandate in the nature of writ of *Mandamus* compelling the 1st to 4th Respondents to execute a deed of conveyance for the house in dispute in the name of the Petitioner.

The 1st to 4th Respondents, having filed their objections, moved for a dismissal of the petition of the Petitioner on the basis that the decisions marked P10 and P11 were made in terms of the Circular marked 1V1, and the decision marked P13 was made in accordance with the Circular marked 1V2, and therefore, the impugned decisions were reasonable and lawful.

The 5th Respondent in her statement of objections took up the position that she is entitled to the premises in dispute as she is in possession of the same for thirty-nine years.

The 1st Respondent, National Housing Development Authority, who is the owner of the premises in suit, namely bearing assessment No. A/1/3, Housing Scheme at Danister De Silva Mawatha, Colombo 9, entered into a Lease Agreement on 21.08.1982, which is marked as P1, with one W.D. Buddhasena who is the father of the Petitioner and the 5th Respondent. Thereafter, the said W.D. Buddhasena (Lessee) deposited the value of the said property with the 1st Respondent Authority to purchase the same, and thereupon, before the execution of the deed of conveyance said W.D. Buddhasena demised on 04.11.2007.

In accordance with the document marked P11, four siblings of the Petitioner and the 5th Respondent had renounced their rights in respect of the premises in dispute in favour of the 5th Respondent. Accordingly,

by letter dated 25.10.2016 marked P10, the 1st Respondent Authority decided to issue a deed of conveyance for 1/6 share of the house to the Petitioner and 5/6 share to the 5th Respondent.

Being aggrieved by the said decision, the Petitioner had preferred a Writ application bearing No. CA 385/2016 to this Court. On 08.01.2019, the Petitioner had withdrawn the said writ application, subject to filing a fresh application on the basis that the 1st Respondent having held a fresh inquiry with the consent of the Petitioner, made an order to convey the entirety of the subject matter to the 5th Respondent. The order of the Court of Appeal in case No. Writ 385/2016 is marked as P14 and the said decision of the 1st Respondent is marked as P13.

Being aggrieved by the said decision marked P13, the instant application is preferred by the Petitioner seeking to quash the decisions containing in the document marked as P10, P11 and P13 on the footing that the said decisions are arbitrary and unreasonable.

The Court is mindful of the fact that the decisions marked as P10 and P11 are *inoperative* at the time of the institution of this case, and therefore, the Petitioner is not entitled to seek a writ of *Certiorari* to quash the said decisions.

I shall now ascertain as to whether the decision marked P13 is arbitrary and unreasonable.

The original lessee W.D. Buddhasena demised before the execution of the deed of conveyance. As such, it is an undisputed fact that the current owner of the subject matter is the 1st Respondent. In the circumstances, the 1st Respondent has every right to decide that in whose favour the deed of conveyance to be executed. Furthermore, the Petitioner has no legal right to challenge the aforesaid decisions of the Respondents and to demand for a deed of transfer in his favour.

On the demise of the original Lessee, the 1st Respondent decided to transfer an undivided 1/6 share to the Petitioner and undivided 5/6 share to the 5th Respondent in terms of paragraph 5 of the Circular No. 2011/05 marked as 1V1. Hence, it is manifest that the said decisions marked as P10 and P11 are in accordance with the Circular marked as 1V1. Subsequently, the said Circular was cancelled by Circular No. 2018/01 and the amended Circular No. 2018/02 marked as 1V2 and 1V3 respectively. The Petitioner, in case No. Writ 385/2016, sought for a fresh inquiry pertaining to this matter, accordingly, the Respondents held a fresh inquiry. At the inquiry, all the children of the original lessee except the Petitioner agreed to execute a deed of conveyance in favour of the 5th Respondent with regard to the premises in suit (vide documents marked 1R6a, 1R6b, 1R6c, 1R6d, 1R6e and 1R6f).

In terms of the Circular marked 1R2 and 1R3, *when the proposed transferee had died prior to the issuance of the relevant deed of transfer, the heir of the original lessee who is in possession of the premises in suit is entitled to have a deed of conveyance executed in his favour.* At the inquiry, it has been established that the 5th Respondent has been in possession of the said premises at the time of the death of the original lessee. Hence, the Respondents decided to execute a deed of transfer in favour of the 5th Respondent.

It is to be noted that the contention of the Petitioner is that the 5th Respondent is in possession of the subject matter with the leave and license of the former was not established at the inquiry. The Petitioner had no legal right to grant license to the 5th Respondent to be in possession.

Having considered the affidavits and the totality of the documentary evidence tendered by the parties, it is amply clear that the impugned decision marked as P13 is in accordance with the facts established at the inquiry and in terms of the Circular marked 1V2 and 1V3. Hence, the

contention of the Petitioner stating that the decision marked P13 is arbitrary and unlawful is devoid of merits.

Where the validity of an administrative act or order is attacked as like in the instant case, the incidence of the burden of proof naturally lies upon the complainant i.e., the Petitioner. If the act is one which in the absence of statutory power would be a trespass or other wrongful injury, the complainant has only to prove the facts which would constitute the wrong and the burden of proof then passes to the public authority, which has to show justification – vide *R v. Inland Revenue Commissioners, ex p. Rossminster Ltd.* [1980] AC 952 at 1011.

In the circumstances, there is no material before this Court to substantiate the case of the Petitioner. Hence, the writs of *Certiorari* and *Mandamus* sought by the Petitioner cannot be granted.

Accordingly, application of the petitioner is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL