

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 Mandamus
under and in terms of Article 140 of the
Constitution of the Democratic Socialist Republic
of Sri Lanka.*

CA/WRIT/16/2021

1. Amarakoonge Piyasena
No. 718/67,
Horana Road,
Korala-ima, Gonapola.
2. A. P. L. Traders (Pvt) Limited
No. 718/67, Horana Road,
Korala-ima, Gonapola.

Petitioners

Vs.

1. K. D. S. Sajeewana
Divisional Secretary of Horana,
Divisional Secretariat, Horana.
2. Road Development Authority
'Maganeguma Mahamedura',
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.
3. C. P. Athuluwage
Chairman,
Road Development Authority,
'Maganeguma Mahamedura',
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.
4. W. A. H. Chathuranga
Executive Engineer of Road
Development Authority,
Executive Engineer's Office,
Bellapitiya, Horana.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Chamara Nanayakkarawasam for the Petitioner.

Shemanthi Dunuwille, SC for the Respondents.

Supported on : 15.12.2021, 20.07.2022

Decided on : 09.08.2022

Sobhitha Rajakaruna J.

The 1st Petitioner was carrying out a business of selling building material such as sand, metal and cement. Subsequently, the sole proprietorship of the 1st Petitioner was converted to the 2nd Petitioner Company. The said business was established on a land of 20.7 perches owned by the 1st Petitioner situated in the above address.

An extent of 0.0126 hectares of the 1st Petitioner's land was acquired in or around 2013 by the State for expansion of the Horana-Colombo road. The Petitioners state that their land is depicted as Lot 109 in the Preliminary Plan No. 4340 and the portion thereof acquired by the State is depicted as Lot A in the Tracing No. Ka/SGO/17/715. The 1st Petitioner has accepted compensation for such acquisition as per the decision of the Acquiring Officer, marked as 'P10'.

The portion of land facing the Petitioners' land which is on the other side of the road was a vacant State land. The said portion of land is considered as the land subjected to this application. Petitioners' contention is that if the road expansion took place acquiring the said vacant land and then it would not be necessary to acquire the land of the 1st Petitioner for the road expansion. Thus, the 1st Petitioner by his letter dated 12.05.2013, marked 'P7' has made such suggestions to the Divisional Secretary of Horana. Anyhow, the road construction has proceeded despite such proposals of the Petitioner.

Meantime, the Chairman of the RDA on the request of the Petitioner, has granted permission for the Petitioner to make use of the said subject land which is in extent of 0.1035 hectares for temporary storage of building material. Such permission has been

granted only for a period of 6 months. On the lapse of the aforementioned 6 months, a letter dated 23.04.2019, marked 'P16' was issued by the Assistant Divisional Secretary of Horana directing the 1st Petitioner to remove the building material from the subject State land.

Consequently, the 1st Petitioner addressed a letter to the Chairman of RDA dated 29.04.2019, requesting the Chairman to grant the said subject land to the 1st Petitioner on a long term lease. The 1st Petitioner contends that the said Chairman has agreed to direct his officers to take necessary steps in respect of his request.

As the Petitioner fails to hand over the vacant possession of the subject land which belongs to State, the Divisional Secretary of Horana issued quit notices twice under the State Land (Recovery of Possession) Act against the 1st Petitioner. Accordingly, the Petitioners are seeking, inter alia, in the instant application for a mandate in the nature of a writ of Certiorari quashing the quit notices marked 'P20' and 'P25' and also a mandate in the nature of a writ of Mandamus directing the 1st to 4th Respondents to grant the subject land or an alternative land on a long term lease.

The Sections 4 and 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended) deal with quit notices issued under the said Act. In terms of Section 9 of the said Act, the person who is in possession of the State Land will not be entitled to contest any of the matters under Section 5, in an inquiry before a Magistrate's Court under the said Act. This Court exercising its jurisdictions in terms of Article 140 is entitled to consider the reasonableness or the legality of the basis on which the competent authority formed any opinion under the said Act or any blatant error in respect of the quit notice or of the relevant process. However, the Petitioner has not submitted any viable ground of review in view of challenging the impugned quit notices marked 'P20' and 'P25'.

The Petitioner's contention is that although the Chairman and the senior officers of the RDA were concerned about the Petitioners hardships, the 4th Respondent was adamant and was maliciously acting to evict the Petitioners from the said land without considering the grant of a long term lease. Further, the Petitioners assert that although the Petitioner made repeated representations to obtain the said subject land or an alternative land on long term lease, the 1st Respondent was acting arbitrarily on the instigation of the 4th

Respondent who was not in good terms with the 1st Petitioner in particular because of the political opinion held by the Petitioner.

However, I am not satisfied that the Petitioner has provided cogent & sufficient evidence and material in this application in order to establish malice on the part of the 1st and the 4th Respondents. Sripavan J. in *Bandaranayake vs. Judicial Service Commission (2003) 3 Sri. L.R. 101* has held that the Court will not in general entertain allegations of bad faith made against the repository of power, unless bad faith has been expressly pleaded and properly enumerated in detail.

On a careful consideration of the documentation tendered by the Petitioners, it is apparent, that the Petitioner has been allowed to use the subject State Land only on temporary basis for the storage of building material. Though the Petitioners have made representations to the relevant authorities requesting the said subject land to be given to him on a long term lease, none of the authorities have officially agreed to such requests.

The Chairman's (of RDA) authority to grant temporary permission for the 1st Petitioner to occupy the subject state land is also, in my view, questionable. Granting of State land on lease or otherwise for a short/long term should be done according to the written laws relating to State lands. The material submitted by the 1st Petitioner to establish his expectation to get the subject land on a long term lease is not strong enough for this Court to exercise its writ jurisdiction to grant a prerogative remedy quashing the impugned quit notices. In the circumstances, I refuse to issue formal notice of this application on the Respondents as the Petitioner has failed to submit a prima facie case. Application is refused.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal