

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

In the matter of an application for Writs of
Mandamus and *Prohibition* under Article 140 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka

Court of Appeal Case No.

CA/Writ/0019/2019.

1. M. A. C. M. Ameer alias M. A. C. M. Aamir,
40/1, Moor Street,
Kalutara South.
2. M. A. C. M. Mujaser
66, Hill Street,
Kalutara South.

Petitioners

Vs.

1. Urban Coucil, Kalutara
Riverside Road,
Kalutara.
2. Amir Nazir,
Chairman,
Urban Council, Kalutara.
3. G. D. Lokuwella,
Secretary,
Urban Council, Kalutara.
- 3A. U. A. A. G. Udagearachchi
Secretary,
Urban Council, Kalutara.
4. Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",

Battaramulla.

5. D. Jagath Munasinghe,
Chairman,
Urban Development Authority,
6th and 7th Floors,
"Sethsiripaya",
Battaramulla.

5A. Harshan De Silva
Chairman,
Urban Development Authority,
6th, 7th and 9th Floors,
"Sethsiripaya",
Battaramulla.

5B. Major General (Retd.) Udaya Nanayakkara
Chairman,
Urban Development Authority,
6th, 7th and 9th Floors,
"Sethsiripaya",
Battaramulla.

6. Patali Champika Ranawaka,
Minister of Megapolis and
Western Development,
17th and 18th Floors,
"Suhurupaya",
Subhuthipura Road,
Battaramulla.

6A. Hon. Mahinda Rajapaksa
Minister of Urban Development & Housing,
17th Floor,
"Suhurupaya",
Battaramulla.

6B. Hon. Prasanna Ranatunga
Minister of Urban Development and Housing
17th Floor,
"Suhurupaya",
Battaramulla.

7. N. Rupasinghe,
Secretary,

Ministry of Megapolis and Western
Development,
17th and 18th Floors,
"Suhurupaya",
Subhuthipura Road,
Battaramulla.

8. Sirinimal Perera
Secretary,
Ministry of Urban Development
& Housing,
17th Floor,
Suhurupaya",
Battaramulla.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Pulasthi Rupasinghe for the Petitioners.

Ms. S. Ahamed, SC with Ms. A. Gajadeera, SC for the
Respondents.

Argued on: 15-06-2022

Decided on: 08-09-2022

MOHAMMED LAFFAR, J.

The Petitioners by their Petition dated 18-01.2019, seeking, *inter alia*, the following reliefs:

(c) A Writ of Mandamus compelling anyone, more or all of the 1st to 7th Respondents and/or anyone acting under the said Respondents to allocate and/or lease and/or convey to the Petitioners, two separate shops at the new commercial complex situated at Station Road, Kalutara built and/or owned and/or operated by the 1st and / or 4th Respondents.

(d) A Writ of Prohibition prohibiting anyone, more or all of the 1st to 7th Respondents and/or anyone acting under the said Respondents from allocating and/or leasing and/or conveying any shops at the new Commercial Complex situated at Station Road, Kalutara built and/or owned and/or operated by the 1st and / or 4th Respondents without allocating two separate shops to the Petitioners.

When the matter was taken up for argument on 15-06-2022, the learned Counsel for the Petitioners informed Court that the Petitioners are seeking reliefs only against the 4th and 5B Respondents.

FACTUAL MATRIX.

The 1st Petitioner was the tenant of the shop bearing No. B42 and the 2nd Petitioner was the tenant of the shop bearing No. B41 “Delkada” complex owned by the 1st Respondent (P1a, P1b and P1c). Due to the communal riots in 2014, the said shops were attacked and gutted (P2). As per the notice of the 1st Respondent dated 10-07-2014 which was issued in accordance with the letter of the 4th Respondent (UDA), the Petitioners had vacated the said premises for the purpose of development of the land wherein the said shops were situated (P3a and P3b). The Petitioners were given assurance by the 1st Respondent that they would be allocated shops at the New Commercial Complex being built at Station Road, Kalutara. On or about March 2018, the Petitioners were summoned to the Kalutara District Office of the UDA and were required to submit proof of the shops they operated at the “Delkada” Complex. The Petitioners state that after perusing the documents submitted by them, the UDA verbally intimated to them that they would be allocated shops at the aforesaid New Commercial Complex. However, as per the document marked P4, the Petitioners were allocated only one shop. The Petitioners further state that by giving a single shop to two persons who had two separate shops previously, the Respondents had acted contrary to the legitimate expectation of the Petitioners.

The Respondents in their objections took up the position that the Petitioners have been allocated one shop at the new Commercial Complex for the reason that the previous two shops, namely, bearing assessment No. B41 and B42 had been amalgamated together and the business had been carried out from one shop. The Petitioners in their counter affidavit have denied the contention of the Respondents.

Observations:

Undisputedly, the 1st Petitioner was the tenant of the shop bearing No. B42 and the 2nd Petitioner was the tenant of the shop bearing No. B41 “Delkada” Complex owned by the 1st Respondent and the Petitioners were given assurance by the 1ST Respondent that they would be allocated shops at the New Commercial Complex being built at Station Road, Kalutara. Moreover, in terms of clause 3 of the Circular bearing No. 1980/46 dated 312-12-1980, issued by the Commissioner of Local Government marked P7, the Petitioners are entitled to two separate shops at the new Complex, which reads thus;

“Where a new market building has been put on after demolishing the old market building, utilizing Government grant or the Council funds, the stalls should be given to the lessees of the stalls of the demolished building on the rent specified in para (1) above, if there is a request from the lessees of the stalls of the demolished market building.”

In this application, the only defence put forward by the Respondents is that the previous two shops, namely, bearing assessment No. B41 and B42 had been amalgamated and the business had been carried out from one shop by the Petitioners. To substantiate the foregoing contention of the Respondents, the recommended list of the UDA is submitted as 4R2 wherein it is recommended that the Petitioners are entitled to one shop as they have amalgamated the previous two shops. It appears to this Court that the Respondents did not have an inquiry to arrive at such a decision. The Respondents failed to produce adequate materials to establish the fact that the Petitioners were heard before making such a recommendation. The documents marked 4R1 and 4R2 are insufficient to form a reasonable opinion that the previous two shops were amalgamated into one shop. In this regard, I refer to the observation made by the Supreme Court in **Choolanie Vs. Peoples’ Bank**¹, where it was held that;

“Satisfactory reasons should be given for administrative decisions. A decision not supported by adequate reasons is liable to be quashed by Court.

Per Dr. Shirani Bandaranayake, J.

¹ 2008 (2) SLR) 93

"..... giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion."

The decisions or recommendations made by the Administrative Authorities should be based on materials. There should be a rational basis to arrive at such a decision. In the instant application, the decision made by the Respondents (4R1 and 4R2) is not based on materials and there is no fair hearing as well. The inquiry reports or field notes with regards to this issue have not been submitted. In this context, it is the view of this Court that the Respondents have acted arbitrarily in coming to their conclusion.

Be that as it may, this Court is mindful of the fact that there is no material (criteria or guideline) to substantiate the contention of the Respondents that when two shops are amalgamated into one, only one shop will be allocated at the new complex.

Moreover, having scrutinized the letter dated 12-10-2014, issued by the 1st Respondent marked as P2, it is well established that the previous two shops were not amalgamated into one, which reads thus;

"කළුතර දකුණ, ගාලු පාර, අංක 41 බී සහ 42 බී දුරණ කඩ දෙක ගිණි ගැනීම සම්බන්ධවයි

කළුතර දකුණ, ගාලු පාර, අංක 41 බී සහ 42 බී දුරණ කඩ දෙක එම්.එම්.සී.එම්. මුස්සර් මහතා සහ එම්.එම්.සී.එම්. අමර් යන අය සතු වන අතර, 2014.06.16 දින කිසියම් පිරිසක් විසින් ගිණි තබන ලද සභාව වාර්තා වූ බවත්, එහිදී එක් කඩයක් සඳහා රු.75 0000/- බැගින් අලාභ හානියක් සිදු වූ බව තක්සේරු කර ඇති බව අප නගර සභාවේ ආදායම් පරීක්ෂක විසින් මා වෙත වාර්තා කර ඇත"

In this scenario, under clause 3 of the Circular bearing No. 1980/46 dated 312-12-1980, issued by the Commissioner of Local Government marked P7, the Petitioners can have a legitimate expectation for two shops at the new Complex.

What is the legitimate expectation? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.

In **Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale**² the Court of Appeal simply described the principle of legitimate expectation as follows:

“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”

Wade discusses the principle of legitimate expectations³ as follows:

“...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and the government becomes a choice between chaos and coercion.” “...It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after a close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made....” (Page 452).

In this regard, I refer to the case of **Hong Kong Vs. Ng Yuen Shiu**⁴. In this case, the applicant was from Macao and lived illegally in Hong Kong. In 1980, the Government of Hong Kong announced a new policy concerning illegal immigrants from mainland China meaning that the Government would now repatriate them back to their country. Due to the fears these immigrants expressed, the Government told them that each would be interviewed and their cases would be considered individually. Three days later, the claimant received a deportation Order. He challenged it arguing

² CA-Writ-328-215-CA. Minutes of 19-02-2020.

³ H.W.R. Wade and C.F. Forsyth, Administrative Law, 11th Edition-p451.

⁴ (1983) 2AC 629.

that he had a legitimate expectation to a hearing before making the decision. Lord Fraser stated in his judgment that some statement or undertaking made by or on behalf of a public authority can create legitimate expectations, as a result, it had become “**unfair or inconsistent with good administration**” to ignore the expectation.

In **GNCT of Delhi v. Naresh Kumar**⁵, the Delhi High Court summarized the legal position with regard to legitimate expectations as follows:

- Firstly, mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.
- Secondly, legitimate expectation may arise if (a) there is an express promise given by a public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.
- Thirdly, for a legitimate expectation to arise, the decision of administrative authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.
- Fourthly, if the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.
- Fifthly, the doctrine of legitimate expectation permits the court to find out if the change in policy which is the cause for defeating the legitimate exp

In **Wickramaratne Vs. Jayaratne**⁶ , Per Gunawardena, J. (P/CA)

"The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or officials to act in compliance with its public undertakings and assurances. Public Officers or the State although are at liberty to alter

⁵ 175 (2010) DLT 143, para 21.

⁶ 2001-3SLR-p161

the Policy, yet by no means are free to ignore legitimate expectations engendered by their actions and/or conduct. The undertaking may or may not be binding on the State, most probably not, but the sacred principle is that no authority-not even the State, in the generality or circumstances, could resile from the undertaking that one has given without first giving the person adversely affected by the revocation or withdrawal of the promise an opportunity to make representation.”

In the instant application, undisputedly, there is an undertaking given by the officers of the 1st Respondent stating that two shops would be given to the Petitioners. Furthermore, as per the document marked P7, the Petitioners can have legitimate expectations to obtain two shops. The determination made by the Respondents as to the fact that the previous two shops were amalgamated is unfounded and unsupported. This Court is mindful of the fact that there is no basis, criteria or material for the Respondents to arrive at a decision that one shop would be given to the amalgamated two shops. In these circumstances, it is the view of this Court that the decisions contained in the documents marked 4R1 and 4R2 are arbitrary and a violation of natural justice that would desecrate the legitimate expectations of the Petitioners.

For the foregoing reasons, a Writ of Mandamus and a Writ of Prohibition have been granted against the 4th and 5B Respondents as prayed for in paragraphs (c) and (d) of the prayers to the Petition dated 18-01-2019. The Petition is allowed with costs fixed at Rs. 50,000/- payable by the 4th and 5B Respondents to the Petitioners.

Application allowed.

JUDGE OF THE COURT OF APPEAL