

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

LANKA.

Court of Appeal Case No:
CA (PHC) 236/2017

High Court Case No:
WA/22/2015

Kankanamlage Chalana Nilanga
Kalawana,
302/5, Dolahena,
Kalawana.

Petitioner

Vs.

01. G.D.L. Udaya Kumari,
Divisional Secretary,
Kalawana.

02. Director General,
Geological Survey and Mines
Bureau,
Galle Road,
Dehiwala.

03. Attorney General,
Attorney General's Department,
Colombo-12.

Respondents

AND NOW

Kankanamalage Chalana Nilanga
Kalawana,
302/5, Dolahena,
Kalawana.

Petitioner-Appellant

Vs.

01. G.D.L. Udaya Kumari,
Divisional Secretary,
Kalawana.

02. Director General,
Geological Survey and Mines
Bureau,
Galle Road,

Dehiwala.

03. Attorney General,
Attorney General's Department,
Colombo-12.

Respondent-Respondents

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.
Counsel: Kenady Kodikara with Nuwan Bopage for the
Petitioner-Appellant.
Amasara Gajadeera, SC for the Respondent-
Respondents.

Both parties agreed to dispose the matter by way of written submissions.

Written Submissions 23.05.2022 by the Petitioner-Appellant.
tendered on: 29.08.2022 by the Respondent-Respondent.
Decided on: 26.10.2022

Prasantha De Silva, J.

Judgment

The Petitioner-Appellant in this matter was granted a license by the Geological Survey Mines Bureau in year 2011 and it was extended till 03.04.2013. Since the said license was not extended after 03.04.2013, the Petitioner-Appellant alleged that the 1st Respondent has maliciously refused to grant an extension for the said license. Petitioner-Appellant is of the view that he had a legitimate expectation that the said license would be extended after the expiry of the said period.

Consequently, Petitioner-Appellant had preferred an application by way of a writ to the Provincial High Court of Sabaragamuwa to have the decision made in document marked as 636 quashed by a writ of certiorari and to have a writ of mandamus

directing Respondent-Respondents to grant a sand mining licence. It appears that the Respondents had filed objections against the application of the Petitioner-Appellant. After the hearing of the said application, the learned High Court Judge had relied upon the objections filed by the Respondents and had dismissed Petitioner-Appellant's application bearing No. WA 22/15.

Being aggrieved by the said Order, Petitioner-Appellant [hereinafter referred to as Appellant] had preferred this appeal to have the Order of the learned High Court Judge set aside and to have reliefs prayed in the petition of appeal granted.

The Court draws the attention to document marked and produced as 036 which is the letter sent by the Divisional Secretary of Kalawana to Appellant on 13.10.2015. As per the said letter, Divisional Secretary had informed the Appellant why his sand license was not extended and why the Divisional Secretary has not recommended to extend the license issued to the names of persons referred in 1-10.

It is worthy to note that the learned High Court Judge in his Order has stated Petitioner-Appellant has not shown reasons sufficient enough to grant a writ of mandamus against the 1st Respondent. Moreover, the learned High Court Judge has stated in his Order that Petitioner-Appellant is eligible for the renewal of the license, provided he clears the boundary matter in Lot 33 AM and fulfils the requirements stated by Geological Survey Mines Bureau and Central Environmental Authority.

It appears that the letter '036' which the Petitioner is challenging, is a letter issued by the 1st Respondent in response to letter 035 sent by the Petitioner. According to the said letter 036, it sets out various adverse environmental and social impacts of sand mining in the areas which were considered by Regional Coordinating Committee.

It was submitted on behalf of the Respondents that in terms of Section 35(1) of the Mines and Minerals Act No. 33 of 1992, the issue of license is at the discretion of the Geological Survey and Mines Bureau. The 1st Respondent is acting on the delegated

powers of the Bureau under Section 8(1) and the 1st Respondent is vested with the delegated power to recommend the issue/renewal or cancellation of the license.

It was further submitted that the power to issue or renew the license is only vested in the Bureau and that the application of the Petitioner is patently misconceived on the very premise that the Petitioner has not sought any relief against the Bureau. In paragraph 13 of the statement of objections, the Respondents contend that the Bureau received a complaint that the Petitioner was engaged in sand mining in contravention of the conditions of the license and the Bureau by its letter dated 30.11.2012 intimated the same to the 1st Respondent. The 1st Respondent is exercising the delegated powers under Section 8(1) of the Act.

It is pertinent to note that nowhere in the Petition, the Petitioner alleges that he has submitted an application to the Bureau for the renewal of the license. As such, there is no decision by the Bureau not to grant the renewal of the license to the Petitioner.

The impugned document marked 2376 is only a communication by the 1st Respondent to the Petitioner containing the reasons why recommendation to renew the license was not made by the 1st Respondent in respect of several other license holders other than the Petitioner.

The position taken up by the Respondents was that the Petitioner has not produced his application for renewal which he ought to have submitted to the Bureau nor has he submitted to Court the decision taken by the Bureau in terms of the Act not to grant the renewal.

The Court's attention was drawn to Section 39(1) of the Act, which makes provisions for an appeal to the Secretary. Section 39(1) of the Act makes provision for an appeal to the Secretary if a party is aggrieved by a decision of the Bureau refusing the issuance or renewal of the licence under Section 35 or Section 36. It appears that the Petitioner has not exhausted this statutory remedy which is equally efficacious.

However, it is worthy to note that in order for the Petitioner to be successful in a writ of certiorari quashing the decision in ൧൩6, the Petitioner ought to establish that the decision of the 1st Respondent not to recommend the renewal was tainted with irrationality, illegality, unreasonableness or procedural impropriety or any ground for judicial review. However, the Petitioner in his application for a writ of certiorari has failed to establish the aforementioned elements in order to successfully obtain a writ of certiorari.

Furthermore, it is settled law that in order to succeed in an application made on grounds of legitimate expectation, the expectation must be legitimate. A mistake or a decision based on erroneous factual data or illegality cannot be the basis for a legitimate expectation.

I quote *Brennan J. in Attorney General of New South Wales Vs. Quinn [1990] 64 Australian LR 327*;

“Legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gate which shuts the Court out of review on the merits”.

A careful consideration of the doctrine of legitimate expectation clearly shows that whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before Court, but also by taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.

Apparently, the Appellant had not established the conduct of the Respondents is illegal, unlawful, irrational, unreasonable and tainted with malice. Furthermore, the Appellant has not substantiated his contention that the Respondent had violated the legitimate expectation and the rules of natural justice. Moreover, the Appellant had not established that he has a right to a renewal of the license and that there is a corresponding public duty on the part of the 1st Respondent to grant prior approval of the same.

In view of the foregoing reasons, it is apparent that the Petitioner has failed to establish a case that warrants a remedy by way of judicial review. Thus, the Order of the learned High Court Judge refusing to grant a writ of certiorari and mandamus is well founded.

Hence, I am not inclined to grant reliefs prayed by the Appellant in the prayer to the Petition of Appeal.

Thus, this appeal of the Petitioner-Appellant is dismissed with cost fixed at Rs.25,000/-.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL