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 a Writ of Prohibition under Article 140 of the Constitution of Sri Lanka.

Meegoda Dona Shrimathi Rasadari,
No. 42/10,
G.H. Perera Mawatha,
Raththanapitiya,
Boralesgamuwa.

CA (WRIT) 147/2020

Petitioner

Vs.

1. Homagama Pradeshiya Sabha,
   Homagama.

2. Sampath Chaminda Jayasinghe,
   Chairman,
   Homagama Pradeshiya Sabha,
   Homagama.

Respondents

Before: **D.N. Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel: Ruwan Nawarathna with Nayana Somaratna instructed by Chameen Paranagama for the Petitioner
Pubudu Alwis with Priyanthi Ganegoda and Supun Jayathilaka instructed by Dinusha Malawige for the 1st and 2nd Respondents.

Written Submissions: 29.11.2022 (by the Petitioner)
29.11.2022 (by the Respondents)
On

Argued On : 31.10.2022

Decided On : 15.12.2022

B. Sasi Mahendran, J.

The Petitioner, a recipient of a block of land allotted to her by the State for her contribution to the field of art, is now before this Court, in terms of Article 140 of the Constitution, praying, inter alia, for a Writ of Certiorari to quash the 'decision' evinced by the letter dated 17th January 2020 ("P10") issued under the hand of the 2nd Respondent, (the Chairman of the Homagama Pradeshiya Sabha) which purports to revoke the approvals granted for the construction of a house on the said block of land.

In the year 2002, the Government allotted blocks of land to twenty-six artists, one of whom was the Petitioner, for their contribution to the field of art. The land allocated for this purpose, named 'Mattegodawatta', situated within the local limits of the Homagama Pradeshiya Sabha, was previously vested in the Land Reform Commission, by virtue of the Land Reform Law No. 1 of 1972, as amended. The Petitioner was allotted Lot No. 15 (depicted in Subdivision Plan No. 420 dated 10th April 2002 prepared by one K.W.D. Chandrani, Licensed Surveyor ("P3")) in the said land. This allotment of land was alienated to the Petitioner by the Land Reform Commission, exercising its powers under

Section 22(1)(c) of the Act, by Deed of Transfer No. 504 executed on 3rd March 2004 ("P4"). The said Subdivision Plan was approved by the Urban Development Authority (hereinafter referred to as "the UDA"), on an application made by the Petitioner, subject to certain conditions such as the construction of the drainage system and access roads on the instructions of the Authority ("P5"). The UDA also, having considered the building application of the Petitioner, granted approval for the proposed building plan, and the corresponding Development Permit ("P7"- dated 14th October 2019) was issued by the Homagama Pradeshiya Sabha (the 1st Respondent) acting for and on behalf of the UDA. This permit is subject to annual renewal. Having received the requisite approvals, she then commenced the preparatory work to build her residence.

The Petitioner, thereafter, received a letter dated 19th December 2019 ("P9") from the Homagama Pradeshiya Sabha. The letter notes that groups representing local inhabitants have objected to the allocation and consequent development of the allotted land because the allocated land is a wetland. She was requested to attend a "discussion" on the 27th of December at the sub-office of the Pradeshiya Sabha, in which she participated. However, she contends that she was not afforded a proper opportunity to present her case at the discussion.

After this discussion, while the preparatory work for construction was ongoing, she received the impugned letter ("P10"). This letter, dated 17th January 2020, issued under the hand of the 2nd Respondent, to the Petitioner, among others, states that the Land Reform Commission, the UDA, the Land Reclamation and Development Corporation, the Disaster Management Centre, and the Divisional Secretariat had all previously agreed, and the Pradeshiya Sabha had separately adopted a resolution on 30th May 2008, to preserve the status quo of the wetland based on the recommendation of the Central Environmental Authority, by its letter dated 6th May 2008. Further, that it had been 'decided' to cancel the approvals granted for the construction of the residences; to remove any structures existing on the said lands with police protection, and for lands to be allocated for the artists in a more suitable area. These decisions were made considering the harmful impact on the wetland. This letter titled 'මත්තේගොඩ නිවාස සංකීර්ණයට යාබදව පිහිටි ජල පෝෂිත තෙත්බිම් ප්‍රදේශය (වගුරු ඉඩම) සම්බන්ධවයි' reads:

"ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාව විසින් මත්තේගොඩ නිවාස සංකීර්ණයට යාබදව පිහිටි ඉඩම් කොටස් කළා කරුවන් වෙත ලබා දීම සහ කලා කරුවන් විසින් මෙම ඉඩම් වල ගොඩනැගිලි සැලසුම් අනුමැතිය ලබා ගැනීමට කටයුතු කිරීමේදී පැහැනගින ගැටළු හා ඉඩම්වලට ප්‍රවේශයට ලබා ගැනීමට කටයුතු කිරීමේදී සිදුවන පරිසර හානිය සම්බන්ධව ගරු

සභාපතිතුමාගේ ප්‍රධානත්වයෙන් හා ඒ සම්බන්ධ සියලු රාජ්‍ය ආයතනවල නිලධාරීන්ගේ සහභාගිත්වයෙන් 2019.12.27 දින හෝමාගම ප්‍රාදේශීය සභාවේ වැතර උප කායර්ාලයේදී සිදු කරනු ලැබූ සාකච්ඡාව හා බැඳේ.

මෙහිදී කලාකරුවන් විසින් බැකෝ යන්ත්‍ර උපයෝගී කර ගනිමින් සිදුකරනු ලබන පාරිසරික වෙනස්කම් සම්බන්ධව නිවාස සංකීර්ණයේ ආසිරි උයන එක්සත් සුභසාධක සමිතිය හා ප්‍රජා ශක්ති සංවධර්න සමිතිය මගින් අදහස් දක්වන ලදී.

මෙම වගුරු බිම ඉතා විශාල නිවාස ප්‍රමාණයක් හරහා පැමිණෙන වැසි ජලය ගලා යාමට හා රඳවා ගැනීමට ඇති භූමියක් බවත්, මෙම ඉඩමෙහි භාවිතය වෙනස් කිරීම දැවැන්ත පාරිසරික ගැටළු ඇතිවිය හැකි බවත්, මධ්‍යම පරිසර අධිකාරියේ 2008.05.06 දිනැති ලිපිය මගින් දක්වා ඇති අතර එම ලිපියේ තවදුරටත් සඳහන් පරිදි මෙම වගුරු බිමේ ස්වාභාවික තත්වය එලෙසින්ම පවත්වා ගැනීමට සුදුසු බවට ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාව නාගරික සංවධර්න අධිකාරිය, ඉඩම් ගොඩකිරීමේ හා සංවධර්නය කිරීමේ මධ්‍යස්ථානය, ආපදා කළමනාකරණ මධ්‍යස්ථානය, ප්‍රාදේශීය ලේකම් කායර්ාලය, ආදී සියලු රාජ්‍ය ආයතන නිලධාරීන් තීරණය කල අතර, 2008.05.30 දින හෝමාගම ප්‍රාදේශීය සභාවේ පැවති මහා සභාවේදී නිවාස සංවධර්නයට අනුමැතිය ලබා නොදීමට තීරණය කර ඇත.

තවද මෙම ඉඩම් පදිංචියට නුසුදුසු බවට රාජ්‍ය ආයතන තීරණය කරන්නේ නම් මෙම ඉඩම් සඳහා ජලය හා විදුලිය සැපයීම කිසිදු අවස්තාවක සිදු නොකරන බවට ලංකා විදුලි බල මණ්ඩලය සහ ජාතික ජල සම්පාදන මණ්ඩලය නියෝජනය කල නිලධාරීන් ප්‍රකාශ කරන ලදී.

මේ අනුව ඉහත සියලුම කරුණු සලකා බලා මත්තේගොඩ නිවාස සංකීර්ණයට යාබදව පිහිටි ජෛව විවිධත්වයක් සහිත ජල පෝෂිත පරිසරවේදී තෙත්බිම ආරක්ෂා කර ගැනීම සඳහා මත්තේගොඩ කලාකරුවන් වෙත වෙනත් ස්ථානයකින් ඉඩම් ලබා දීමටත්, ඉදිකර ඇති තාවකාලික ඉදිකිරීම් සියල්ල පොලිස් ආරක්ෂාව සහිතව ඉවත් කිරීමටත්, යෝජිත ප්‍රදේශයේ නිවාස ඉදිකිරීම සඳහා හෝමාගම ප්‍රාදේශීය සභාව විසින් සිදුකර ඇති අනුමැතිය නැවත අවලංගු කිරීමටත්, පැමිණි සියලුම රාජ්‍ය නිලධාරීන් සහ සාමාජිකයන් ඒකමතිව තීරණය කරන ලදී."

The Petitioner contends that this 'decision' is arbitrary, unlawful, and in violation of her legitimate expectation.

We will now address this contention.

It is argued that the relevant authority to make the decision whether to revoke the approvals is the UDA and not the Homagama Pradeshiya Sabha. In response to the Respondents' objection that the UDA ought to have been added as a party to this application, the Petitioner stated, in her Counter-Objections (in Paragraph 17) that there was no need to so add since there was no cause of action against the UDA. This was because the UDA "did not take any step in order to cancel and or revise any approval and/or licences already granted to the Petitioner".

The Respondents in their Statement of Objections (in Paragraph 8) note that "in terms of the law and the regulations the authority and/or power for the approval of subdivision plans and building plans are vested with the Urban Development Authority, but Urban Development Authority has delegated the said powers to the relevant local authorities." Further, the approval is granted by the Planning Committee of the local

authority and the relevant officers of the relevant local authority, but, the presence of the representative of the UDA is a mandatory requirement for the said purpose.

On a perusal of the relevant applicable laws, it appears that the delegatee (in this case the relevant officer of the Homagama Pradeshiya Sabha) when exercising or discharging any power, duty, or function delegated to it, it must do so under the direction, supervision, and control of the Urban Development Authority. The delegatee cannot exercise those powers at their own will. If it does, the decisions or actions would be null and void as they are ultra vires.

In the instant case, there are two documents on the record, one submitted by the Petitioner ("P12") and one submitted by the Respondents ("R15") that demonstrate that the decision of the Respondents, as evinced in the impugned letter, are not proprio vigore. With regard to the former, the Statement of Objections states thus:

"The 2nd Respondent sent the letter dated 06-03-2020 to the Director of the Urban Development Authority which is marked P12 with the Petition of the Petitioner **seeking necessary advise** to take steps to cancel the approvals already granted including the Petitioner's **since Urban Development Authority is the appropriate authority to act in respect of granting and cancellation of the approvals** for development purposes." [emphasis added]

In the latter ("R15") the Director (Western Province) of the UDA, by letter dated 16th July 2020, in response to "P12", requests the Secretary of the Homagama Pradeshiya Sabha to discuss the reasons for revoking the approvals at the Planning Committee meeting and to forward the same to the UDA in order for it to instruct whether to revoke the approvals. The relevant portion of this letter reads:

"ඒ අනුව අදාළ උපදෙස් ලබාදීම සඳහා අදාළ අනුමැතීන් ලබාදීමේදී සලකා බලන කරුණු සහ එම අනුමැතීන් අවලංගු කිරීම සඳහා පාදක කරගත හැකි කරුණු පිළිබඳව සැලසුම් කමිටුවේ සාකච්චා කර එම ගොනු අධිකාරිය වෙත ලබා දෙන ලෙස මෙයින් දන්වා සිටිමි."

Thus, there has been no decision to revoke or cancel the permit yet, or rather, there is nothing before us to demonstrate the same. The 'decisions' communicated in the impugned letter have not been made under the supervision or direction or control of the UDA. Therefore, they cannot be deemed to be decisions proprio vigore. It is merely a communication to the UDA. To use the words of his Lordship Sharvananda J. (as he then was) in Fernando v. Jayaratne 78 NLR 123, this 'decision' "has no binding force; it is not a step in consequence of which legally enforceable rights may be created or extinguished". As this Court does not possess a magical crystal ball to predict the future course of action

of the UDA, especially whether it will revoke the approvals, we are of the view that this application is premature.

The reason for the Respondents' attempts to revoke the approvals stems from the fact that the land allocated is a wetland. A perusal of the Central Environmental Authority's letter dated 6th May 2008 (the same letter mentioned in the body of the impugned letter) addressed to the Homagama Pradeshiya Sabha, the Land Reform Commission, and the UDA ("R-5(i)"), submitted by the Respondents, substantiates this. This letter recommends the preservation of the natural condition of the wetland as it is without allowing for any development on the wetland, drawing attention to the dangers that could result otherwise. This letter reads:

" **<u>මත්තේගොඩ නිවාස නිවාස සංකීණර්යට යාබදව පිහිටා ඇති වගුරු ඉඩම සංවධර්නය කිරීම.</u>**

මත්තේගොඩ පරිසරය සුරැකීමේ සංවිධානය මගින් මෙම අධිකාරිය වෙත යොමු කරන ලද පැමිණිල්ලක් සඳහා මෙම අධිකාරියේ නිලධාරීන් විසින් 2008.04.22 වන දින ක්ෂේත්‍ර පරීක්ෂණයක් සිදු කරන ලදී. එහිදී පහත කරුණු අනාවරණය වී ඇත.

පැමිණිල්ලට අදාළ ස්ථානය හෝමාගම බල ප්‍රදේශය මත්තේගොඩ නිවාස සංකීණර්යට යාබදව අක්කර 2 ක් පමණ වන භූමි ප්‍රමාණයකි.

මෙම ඉඩම ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාවට අයත් වන අතර, එය කොන්ක්‍රීට් කණු සිටුවා කැබලි කොට ගස් කපා එලි කොට ඇත.

පරීක්ෂා කරන ලද දිනය වියලි කාලගුණය සහිත දිනයක් වුවද, එදින ඉඩමෙහි ජල උල්පත් පවතින බව සහ ජලය ගලා යන ඇලක් පැවති බව නිරීක්ෂණය කොට ඇත. තවද, ඉඩමෙහි සමහර ස්ථාන කිරිමැටි සහිත පසකින් සමන්විත වී ඇත.

මෙම ඉඩම මත්තේගොඩ නිවාස සංකීණර්යේ මතුපිට භූමි මට්ටමට වඩා අඩි 15ක් පමණ පහතින් පිහිටා ඇති අතර, එම මට්ටමට සමාන්තරව මත්ත්ගේගොඩ පොදු නිවාස සංකීණර්යට අයත් පොදු නාන ලිඳ පිහිටා ඇත.

පරීක්ෂණ අවස්ථාවේදී ද එකී නාන ලිදෙහි භූගත ජල මට්ටම මතුපිට භූමි මට්ටම දක්වාම පැවතුනි.

මත්තේගොඩ පොදු නිවාස සංකීණර්යේ වැසි ජලය ගලා බැසීම සඳහා යොදා ඇති කාණු මෙම වගුරු බිම වෙත යොමු කොට ඇත.

උක්ත ඉඩමෙහි බැස්ම බටහිර දෙසට යොමු වී පවතින අතර, බටහිර මායිමේ වගා කරන ලද කුඹුරු පිහිටා ඇත.

උක්ත නිරීක්ෂණ වලට අනුව මෙම වගුරු බිම ඉතා විශාල නිවාස ප්‍රමාණයක් හරහා පැමිණෙන වැසි ජලය ගලා යාමට හා රඳවා ගැනීමට ඇති භූමියක් ලෙස සැලකිය හැක. **එබැවින් මෙම ඉඩමෙහි භාවිතය වෙනස් කිරීම දැවැන්ත පාරිසරික ගැටළු මතු වීමට හේතුවිය හැකි බව අප අධිකාරියේ නිගමනයයි. එබැවින් මෙම වගුරු බිමේ ස්වාභාවික තත්වය එලෙසින්ම පවත්වා ගැනීමට කටයුතු කරන මෙන් නිදෙර්ශ කරමු**." [emphasis added]

Based on the recommendation of the Central Environmental Authority, and the observations made by officers of the UDA on a field visit of the land, the Director General of the UDA by letter dated 16th July 2008 ("R5(iv)") informed the Chairman of the Homagama Pradeshiya Sabha to not permit any development to take place on those lands. Further, a letter dated 10th July 2008 ("R5(ii)") issued by the Director General of the Disaster Management Centre requests the Homagama Pradeshiya Sabha to refrain from approving a plan to subdivide that land as well. On this basis, a resolution had been adopted at the General Meeting of the Homagama Pradeshiya Sabha held on the 30th of May 2008.

This position is quite in contrast to the Land Reform Commission which maintains that the land is not a wetland. This is seen in its most recent letter to the Homagama Pradeshiya Sabha ("P15") dated 24th January 2022 as well.

We cannot then determine which version is correct, as those authorities are not before this Court. It is trite law that this Court is not the forum to adjudicate factual matters in dispute (Thajudeen v. Sri Lanka Tea Board [1981] 2 SLR 471 as approved in the case of Dr. Puvanendran v. Premasiri [2009] 2 SLR 107).

But what can be said is that regrettably, this entire dispute stems from the lack of care and due diligence, or sheer negligence, in the decision-making process when determining at the very outset the suitability of the land proposed to be allocated for the purpose of distribution and the subsequent negligence of the authorities concerned in the process of granting approvals, for the development of the land. The relevant land allocated, for distribution amongst those artists in appreciation of their contribution to the field of art, per the documents submitted to this Court appears to be a wetland (although the Land Reform Commission maintains the contrary position). Owing to the harmful impact that can be caused to the wetland (if it is so) because of the development and construction activities on it this Court has the difficult task of having to balance the unfairness that has been caused to the Petitioner against the real or potentially harmful or detrimental impact that can be caused to the wetland.

We are also mindful that in addition to the Petitioner, twenty-five other artists have also been gifted land in recognition of their services. Therefore, development on all twenty-six blocks of land, as noted in the documents submitted to us, might detrimentally impact the wetland. The scales of justice would be evenly balanced, if a solution such as the one apparently proposed in the 'discussion' held on the 27th of December 2019, to

allocate land in a more suitable area is adopted. Considering the plight of the Petitioner, had all the relevant authorities been before this Court, a settlement of that nature could have been arrived at.

Nonetheless, as we observed before since there is no decision proprio vigore in respect of which this Court can exercise its writ jurisdiction, the challenge of balancing those competing interests does not arise in the present application.

We dismiss this application. However, the dismissal of this Petition must not be construed as a bar to the Petitioner, if advised, to file a fresh application in appropriate circumstances.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL