

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

C.A. Writ Application No:

466/2020

1. A.R.H. Mohideen
K.A. Rahuman & Company,
No. 512, W.E. Bastian Mawatha,
Colombo 11
2. M.T.B. Aroos
'Thowfeeks',
No. 500, W.E. Bastian Mawatha,
Colombo 11
3. M.N.M. Resmi
Amanya Chicken Shop,
No. 503, W.E. Bastian Mawatha,
Colombo 11
4. M.M.M. Mifaz
Nissaa Poultry Shop,
No. 504, W.E. Bastian Mawatha,
Colombo 11
5. Adam Navas Mohamd Hafsan
M.A. Adam & Son,
No. 505, W.E. Bastian Mawatha,
Colombo 11

6. M.B.M. Siyam
Buhari Chicken House,
No. 502, W.E. Bastian Mawatha,
Colombo 11

7. Casiwawa Shahul
Hameed Moheedeem & Co.,
No. 511, W.E. Bastian Mawatha,
Colombo 11

8. M.I.M. Iqbal
No. 510, W.E. Bastian Mawatha,
Colombo 11

9. M.I. Farook
'Rushanas',
No. 513, W.E. Bastian Mawatha,
Colombo 11

10. M.B.M. Safeer
I.L.M. Buhari & Company,
No. 514, W.E. Bastian Mawatha,
Colombo 11

11. Velu Palani Amma
T.P.P. Mohomad Faruk,
No. 515, W.E. Bastian Mawatha,
Colombo 11

Petitioners

Vs.

1. Colombo Municipal Council
Colombo 07

2. The Mayor
Colombo Municipal Council
Colombo 07
3. Urban Development Authority,
'Sethsiripaya'
Battaramulla
4. Harshan De Silva,
Chairman,
Urban Development Authority,
'Sethsiripaya'
Battaramulla
5. N.P.K. Ranaweera
Director General,
Urban Development Authority,
'Sethsiripaya'
Battaramulla

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Thishya Weragoda with Sanjaya Marambe, Prathap Welikumbura and

Thamila Perara for the Petitioners

Ruwantha Coorey for the 1st and 2nd Respondents

Ms. Hashini Opatha, SC for the 3rd- 6th Respondents.

Supported on: 16. 03.2022

Order delivered on: 19.05.2022

S.U.B. Karalliyadde, J.

This Order pertains to whether the notices of this Application should be issued formally on the 1st to 3rd Respondents and whether the interim reliefs sought in prayers 'g' to 'I' in the Petition should be granted. The facts related to this application in nutshell, are as follows; The Petitioners are engaged in the business of retail poultry trading in the captioned addresses in the Bastian Mawatha, Colombo 11 and in or around December 2020, they were verbally informed by the Officials of the Urban Development Authority, the 3rd Respondent (the UDA) to vacate the premises and relocate to the meat shops offered to them in the relocated Manning Market in Peliyagoda built by the UDA. The position of the Petitioners is that the UDA has no right to the land or shops which they are carrying-on their business and therefore, the UDA has no right to inform them to vacate the place. The premises which the Petitioners are occupying were built by them and situated outside the Manning market premises but adjoining the Manning market premises. The Petitioners do not dispute the fact that the Manning market premises belong to the UDA. With their Petition, the Petitioners have tendered to Court the receipts issued to them by the Colombo Municipal Council, 1st Respondent (the CMC) to carry-on the poultry shops. Under such circumstances, the argument of the learned Counsel for the Petitioners is that the Petitioners have a legitimate expectation to continue with their business in the same location in the Bastian Mawatha.

The position of the learned Counsel for the CMC is that the shops in which the Petitioners are doing their business are situated within the area which the Manning market is situated and that area belongs to the UDA. The CMC is only managing the area which the Manning market is situated in order to maintain the good health standards and cleanness of the place.

The learned State Counsel appearing for the UDA submitted to the Court that the premises which the Petitioners are engaged with their business are situated within the Manning market premises which belongs to the UDA and it has not been given permission for the Petitioners to occupy the premises. Therefore, the Petitioners have failed to produce any evidence for the satisfaction of the Court that they have a legal right to occupy those premises. The learned State Counsel therefore, argued that for the Court to consider whether the Petitioners have a legitimate expectation to occupy the premises, it has to be satisfied that the Petitioners have a legal right to the shops to base their claim of legitimate expectation. She drew the attention of the Court to the fact that the CMC has given permission to the Petitioners only to carry-on the poultry business. The UDA has tendered to Court documents marked X, X-1 to X-13 for its satisfaction that the area which the Manning market is situated is vested with the UDA.

When considering the above stated facts of the instant case, it is clear that the argument of the Petitioners is that the shops which they are engaged with the poultry business are situated outside the Manning market premises. The argument of the 1st to 3rd Respondents is that those shops are situated within the Manning market premises which has been vested with the UDA. Whether the shops which the Petitioners are carrying-on their business are situated within the area which belongs to the UDA or not is a serious fact which should be decided by a competent court. When the major facts are in dispute, the Court cannot rely on the affidavit evidence of the Petitioners and issue writs. In the case of *Thajudeen V. Sri Lanka Tea Board and Another*¹ Justice Ranasinghe held that,

¹ (1981) 2 SLR 471.

“CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Ed.), Vol.2, states at page 381: "The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt, the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances cannot be controlled by mandamus;" and,

On page 449: "Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation², Porraju v. General Manager B. N. Rly³”

When considering the above stated facts of the instant Application and the legal provisions, this Court cannot invoke its writ jurisdiction since one of the major facts, namely; whether the premisses which the Petitioners are carrying-on the poultry business are situated within the Manning market area which belongs to the UDA or not is in dispute.

² A.I.R. 1953 Cal.581.

³ A.I.R. 1952 Cal.610.

In “Administrative Law” by H. W. R. Wade and C. F. Forsyth (Wade & Forsyth, page–450) defines the concept of legitimate expectation in the following manner.

“It is not enough that an expectation should exist; it must in addition be legitimate. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. The test is ‘how on a fair reading of the promise it would have been reasonably understood by those to whom it was made ...”

As per the facts of the instant case the UDA has not given any permission or any authority to the Petitioners to occupy the premises. Hence, the Petitioners have failed to establish a valid ground in order to obtain the reliefs sought in the writ application.

Under all the above stated circumstances, the Court cannot invoke its writ jurisdiction.

The Court, therefore, dismiss the application. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL