

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

**CASE NO: CA/WRIT/400/2019**

Saman Weerakoon.  
Galkanda, Medawachchiya Road,  
Horowpathana.

**PETITIONER**

**VS.**

1. The Divisional Secretary.  
The Divisional Secretariat,  
Kapugollewa Road,  
Horowpathana.
  
2. Provincial Land Commissioner.  
Provincial Land Commissioner's  
Department,  
North Central Province,  
Dharmapala Mawatha,  
Anuradhapura.
  
- 3 National Water Supply and Drainage  
Board.  
Galle Road,

Rathmalana.

4 R. Senthil.  
Assistant Divisional Secretary,  
Divisional Secretariat,  
Kaougollewa Road,  
Horowpathana.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. Karalliyadde, J.**

Counsel: Mahanama De Silva for the Petitioner.  
Mahen Gopallawa, Senior.D.S.G. with I. Randeny,  
S.C., for the Respondents.

Supported on: 02.03.2022

Decided on: 25.05.2022

**Mohammed Laffar, J.**

As per the journal entry dated 2<sup>nd</sup> November 2021, this matter has been fixed for argument. However, it appears to this Court, that the application has not properly been supported for notices. As such, on the 2<sup>nd</sup> of March 2022, this Court permitted the learned Counsel for the Petitioner to support the application. In writ matters, *ab initio* the application has to be supported to the satisfaction of the

Court. Thereafter, if the Court is satisfied that there is a *prima facie* case to be argued, the Court will issue notices to the Respondents. Otherwise, the Court will refuse notices and dismiss the application.

We heard the learned Counsel for the Petitioner in support of this application. We heard the learned Senior Deputy Solicitor General for the Respondents as well.

The Petitioner, a resident of Galkanda, Medawachchiya Road, Horowupathana has filed this application seeking a Writ of Mandamus, directing the 1<sup>st</sup> Respondent to perform his duties and award the Petitioner a permit to the State land that he is currently residing in, as he has a legitimate expectation that the said land would be bestowed to him.

In analysing the abridged facts of the matter, the Petitioner states that one T.S. Richard came into possession of the State land in extent of approximately half an acre in 1935, and thereafter, he was issued with a permit to the same under the provisions of the Land Development Ordinance (Vide P2). With the passage of time, one Seelwathie, the granddaughter of said T.S. Richard came into possession of the said land. In or about 1989, the 3<sup>rd</sup> Respondent constructed a deep well and office building in the disputed land. However, due to the unsuitability of such a deep well, the deep well and the office building were abandoned.

The Petitioner states that in 1996, the said Seelwathie, promised to provide him an extent of 8 perches out of the said land, and accordingly, in 2002, the Petitioner was given possession of the same as well. The Petitioner claims that he was in possession of the land without obstruction until the year 2011. Towards the end of 2011, the officials of the 3<sup>rd</sup> Respondent Board requested the Petitioner to hand over the possession of the land in dispute as the 3<sup>rd</sup> Respondent was in need of the said land. In light of this, the Petitioner further states that the Provincial Land Commissioner

conducted a field inspection on the 19<sup>th</sup> of March 2013. Thereafter, the Provincial Land Commissioner, under circular NO. 2008/4, recommended to the Divisional Secretary that there were no legal impediments to issue a permit to the Petitioner with regard to the land in dispute.

Thus, the Petitioner in his Petition further states that in light of the events stated above, he has a legitimate expectation of a permit to be issued to him under the Land Development Ordinance in respect of the said 8 perches. And the 1<sup>st</sup> Respondent has a legal duty to issue a permit to the said land, especially in view of the recommendations made by the relevant authorities

The 1<sup>st</sup> and 3<sup>rd</sup> Respondents by way of objections responded to the Petitioner's application by stating that the 3<sup>rd</sup> Respondent has constructed the pump house and office buildings on the said land where they have been in possession since 1990. Furthermore, the 1<sup>st</sup> Respondent consented to lease out the premises to the 3<sup>rd</sup> Respondent. While such a process was underway, the Petitioner with few others had forcibly entered the aforesaid property and defaced the physical boundaries. In response to this, the 3<sup>rd</sup> Respondent requested the 1<sup>st</sup> Respondent to take necessary action to evict the encroachers.

It is transpired from the documents tendered that the Petitioner had been issued with a permit bearing number 027720 for another land under the Land Development Ordinance on 23<sup>rd</sup> March 2011 (Vide 1R11). However, the said permit was subsequently revoked for violating condition number 1.3.1 (අ) which states that a person who has alienated State land to a 3<sup>rd</sup> party without permission is not eligible for another State land. It is highlighted that the Petitioner has already illegally alienated State land to 3<sup>rd</sup> parties without permission (Vide 1R11A).

Thus, it is evident that the Petitioner has deliberately misrepresented and suppressed the material facts to give the

impression that he is entitled to the land in dispute wherein the 3<sup>rd</sup> Respondent has been in possession. Thereby, it is well established that the Petitioner is not entitled to a permit to a State land as he has already violated a condition of the permit issued by the State under the Land Development Ordinance. The person who is invoking the writ jurisdiction must appear before Court with clean hands and should disclose all relevant facts. In the instant application, the Petitioner has intentionally suppressed the relevant facts and attempted to mislead this Court as to the fact that he had already been granted with a permit in respect of a State land, whereas the same was revoked on the basis that the Petitioner had violated the terms and conditions stipulated therein. This Court is of the view that the Petitioner has suppressed the above material facts, thereby, has not come to this Court with clean hands.

As the Petitioner contends that he has a legitimate expectation over the land in dispute, it is first necessary to delve into the scope and substance of the concept of legitimate expectation by analysing decided cases of the Apex Courts.

Such was decided in the cases of **Regina v Secretary of State for Home Department and Governor of Her Majesty's Prison Risley ex parte Hargreaves**, [1997] 1 WLR 906. The Indian Supreme Court, in the case of **Ram Pravesh Singh and Ors. vs. State of Bihar and Ors**, (2006 (8) SCJ 721), held that;

*"It is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by Courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority,*

*either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course."*

It is pertinent to note that the permit issued to the said T.S. Richard had subsequently been revoked for the reason of failure to develop and cultivate the said larger land. As such, the Seelawathi, the granddaughter of T.S. Richard or the Petitioner who is claiming rights upon the promise given by Seelawathi cannot have a legitimate expectation for a permit in respect of the land in suit. In paragraphs 7 and 8 of the Petition it is averred that a block of land of 1 Acre and 2 Roods which overlaps the land claimed by T.S. Richard, was granted to Seelwathie (P3). However, as per the Extraordinary Gazette bearing number 1653, the said permit was revoked and therefore, no right or entitlement could accrue to the heirs of Seelawathi or the Petitioner, from the said permit. It is to be noted that the Petitioner has refrained from disclosing such cancellation of the permit to this Court. In short, the basis of legitimate expectation on the part of the Petitioner to obtain a permit to the said land is baseless, as the permit issued to the original occupier, T.S. Richard was subsequently revoked.

Furthermore, it is significant to note that the expectation of receiving a permit was planted in the mind of the Petitioner by the said Seelwathie and not by any public authority. Therefore, it is evident that the purported legitimate expectation was not created by the public authority. As such, there is no legal basis for the Petitioner to claim the land in dispute on the ground of legitimate expectation. Furthermore, in the permit issued by the first Respondent to the said Seelwathie, one Udeni Weerakoon has been named as her successor and not the Petitioner. However, if the Petitioner was named as the successor, one could infer that the Petitioner would have a legitimate expectation that he would be granted the land. This has not manifested in the instant application. In these circumstances, it appears to this Court that the Petitioner is not entitled to a permit on the ground of legitimate expectation.

The Petitioner further states that on 15<sup>th</sup> November 2017, he made an application to the Supreme Court bearing number SC/FR/411/2017 (vide X25) on the same basis as the matter at hand, claiming that his fundamental rights have been violated as the 1<sup>st</sup> Respondent has not taken steps to issue a permit in respect of the aforesaid land. However, leave to proceed for the said application has been refused. As such, it is the view of this court that, as the question that arises for determination in this application has already been adjudicated by the Supreme Court, this Court has no jurisdiction to reconsider the same question in the instant writ application.

As per paragraph 41 of the Petition, it is asserted that the Petitioner has invoked the jurisdiction of the High Court of the North Central Province in case number NCP/PHC/HNP/05/2018 seeking a writ of Mandamus against the Divisional Secretary directing him to issue a permit. Whereas the said High Court dismissed the application on the footing that the Court has no jurisdiction. Being aggrieved by that Order, the Petitioner has preferred an appeal to the Court of Appeal which is currently pending. In the current circumstances, we are of the view that the Petitioner cannot maintain the instant application on the same basis.

In the circumstances, it is the view of this Court that the instant application is devoid of merits and cannot be proceeded with. Thus, I refuse to issue notices to the Respondents and dismiss the application.

I make no order as to costs.

*Application dismissed.*

**Judge of the Court of Appeal**

**S. U. B. Karalliyadde, J.**

I agree.

**Judge of the Court of Appeal**