

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

In the matter of an Application for a mandate in
the nature of writ of Certiorari under Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA / Writ application No. 490/2019

Herath Mudiyansele Wijerathne
No 35/27, Nithulgallana,
Hurulu Nikawewa,
Galenbindunuwewa.

Petitioner

Vs

1. Divisional Secretary
Divisional Secretariat,
Galenbindunuwewa.
2. Ananda Atapattu,
Land Officer,

Divisional Secretariat,
Galenbindunuwewa.
3. Ceylon Petroleum Corporation,
No. 609, Danister De Silva Mawatha,
Colombo 09.
4. Dhammika Ranathunga
Chairman,

Ceylon Petroleum Corporation,
No. 609, Danister de Silva Mawatha,
Colombo 09.
5. N.R.R. Jayasekara
Director,
Ceylon Petroleum Corporation,
No. 609, Danister de Silva Mawatha,
Colombo 9.

6. Athula B. Herath
Director, Ceylon Petroleum Corporation,
No. 609, Danister de Silva Mawatha
Colombo 09.
7. K.A. Vimalenthiraj
Director,
Ceylon Petroleum Corporation
No. 609, Danister de Silva Mawatha
Colombo 09
8. R.A. Nimal Jayasundara
Director,
Ceylon Petroleum Corporation
No. 609, Danister de Silva Mawatha
Colombo 09
9. Sashi Danathunga ,
Director,
Ceylon Petroleum Corporation,
No. 609, Danister De Silva Mawatha,
Colombo 09.
10. W.S. Perera
Director, Ceylon Petroleum Corporation,
No. 609, Danister De Silva Mawatha,
Colombo 09.
11. Chinthana K. Senevirathna,
No. 145 / D, Kekirawa Road,
Galenbidunuwewa.
12. Hon Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Dr. Jayatissa De Costa, P.C with D.D.P. Dasanayake for the Petitioner

Supported on: 05.05.2022

Order delivered on: 09.06.2022

S.U.B. Karalliyadde, J.

This Order pertains to the issuance of notices of this writ application on the Respondents. We heard the learned President's Counsel in supporting the application. By the Petition dated 24.10.2019 to this application, the Petitioner seeks reliefs *inter alia*, the writs of Certiorari to quash the approval dated 17.02.2016 given by the Divisional Secretary of Galenbidunuwewa, the 1st Respondent to transfer a land alienated on a Grant (marked as P-13) issued under the Land Development Ordinance, No. 19 of 1935 (as amended) (herein after referred to as the Ordinance) to Chinthana K. Senevirathna, who is the 11th Respondent and the authority given to him on 05.01.2018 by the Ceylon Petroleum Corporation, the 3rd Respondent to set up a fuel station on the said land (marked as P -17).

The Grant marked as P-3 has been issued to one Gomis Fernando under the Ordinance for lot No. 453 depicted in Plan No. 1420 of the Surveyor General (marked as P-1). After the demise of the said Gomis Fernando, by the document dated 13.03.2000 (marked as P- 4) his son, Lakshman Priyantha Fernando has been nominated by the 1st Respondent, in terms of the 3rd schedule to the Ordinance as his successor. The said Lakshman Priyantha Fernando obtained permission of the 1st Respondent by letter dated 17.02.2016 (marked as P-13) in terms of the Ordinance to transfer 1 Rood and 22 Perches out of the entire land to the 11th Respondent. Thereafter, said Lakshman Priyantha Fernando alienated lot 2 in the Surveyor Plan No. 1427 dated 12.02.2016

(marked as P-6) which is 1 Rood and 22 Perches in extent to the 11th Respondent on the deed bearing No. 560A dated 18.02.2016 (marked as P-5).

One of the grounds which the Petitioner seeks to issue a writ of Certiorari to quash the approval of the 1st Respondent containing in the document marked as P-13 is that in obtaining the approval, the 11th Respondent has misrepresented the facts to the 1st Respondent that he is a farmer with low income (as per the documents marked P-7 and P-8). The other ground upon which the Petitioner seeks for the writ of Certiorari to quash P-13 is that the 11th Respondent is planning to set up a fuel station on the above-mentioned land which might be harmful to the environment of the area. The learned President's Counsel appearing for the Petitioner argued that the Permits under the Ordinance could be issued for State land to utilise for agricultural purposes and not for industrial purposes.

After the demise of the permit-holder, in terms of the Ordinance, his son, Lakshman Priyantha Fernando has been nominated by the 1st Respondent as his successor to the land mentioned in the Grant marked as P-3. Thereafter, Lakshman Priyantha Fernando obtained the approval in terms of the Ordinance, by the document marked as P-13, which is impugned by the Petitioner, to alienate 1 Rood and 22 Perches to the 11th Respondent and transferred lot 2 in Plan marked as P-6 which is in extent of 1 Rood and 22 Perches on the deed marked as P-5 to the 11th Respondent. Therefore, in granting the approval to alienate 1 Rood and 22 Perches to the 11th Respondent on P-13, the 1st Respondent has followed the provisions of the Ordinance and not violated the provisions of the Ordinance. On the other hand, there is no material before this Court that any prejudice has been caused to the Petitioner as a result of granting the approval of the 1st Respondent. Under such circumstances, the Petitioner has failed to satisfy the Court that there existing any ground for the Court to exercise its writ jurisdiction and issue a writ of Certiorari to quash the approval containing in the document marked as P-13.

The Petitioner also seeks a writ of Certiorari to quash the authority given by the Ceylon Petroleum Cooperation, the 3rd Respondent on the document marked as P-17 to set up a fuel station on the above-mentioned land to the 11th Respondent. The position of the learned President's Counsel for the Petitioner is that the preparation of the land for setting up the fuel station by filing it, would obstruct the water channels carrying water to feed Knnimaduwa tank and that the authorities have stated that the oil leak of the underground tanks over long period of time might pollute the paddy field of the Hurulu Janapada. Nevertheless, the learned President's Counsel appearing for the Petitioner has failed to substantiate that position. If setting up a fuel station is so detrimental to the quality of the environment, the Petitioner should have made the parties who could be affected as a result of setting up the fuel station as parties to this application. At least, there is no material before the Court that the Petitioner is going to be affected. Therefore, I am of the view that the Petitioner has failed to satisfy the Court that he is entitled for a writ to quash P-17 either. Accordingly, I refuse to issue notices on the Respondents and dismiss the Application.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL