

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

C.A. Writ No 401/2017

Bothalage Antony Greshan Fernando
“555”
Bandarawaththa
Seeduwa

Petitioner

Vs.

1. Sanjeewani Herath
Divisional Secretary
Divisional Secretariat
Wanathawilluwa
- 1.(a) Milanga Prabath Nandasena
Divisional Secretary
Divisional Secretariat
Wanathawilluwa
2. J.M.R.P. Jayasinghe
The Provincial Land Commissioner
Provincial Land Commissioner’s
Department
Provincial Council Office Complex
Kurunegala
3. H.K.D.W.M.N. Hapuhinna
Deputy Land Commissioner
(Ranbima)
No. 1200/6
Rajamalwatte Road
Battaramulla

3. (a) W.W.A. Chandra
Deputy Land Commissioner
No. 1200/6
Rajamalwatte Road
Battaramulla
3. (b) K.P.T. Pubudi Premadasa
Deputy Land Commissioner
No. 1200/6
Rajamalwatte Road
Battaramulla
3. (c) L.A. Jayasinghe
Deputy Land Commissioner
No. 1200/6
Rajamalwatte Road
Battaramulla
4. R.M.C.M. Herath
Commissioner General of Land
No. 1200/6
Rajamalwatte Road
Battaramulla
4. (a) K.D. Bandura Jayasinghe
Commissioner General of Land
No. 1200/6
Rajamalwatte Road
Battaramulla
5. Hon. Attorney General
Attorney General's Department
Colombo 12
6. Rathnayake Mudiyanseelage Saman Kumara
Morapathawa Road
Near the Railway Line
Wanathawilluwa South
Wanathawilluwa

Respondents

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Ashan Fernando for the Petitioner
A. Weerakoon, SC for the 1st to 5th Respondents
Vinod Wickremasooriya with Sudharma Gamage
For the 6th Respondent

Argued on : 07.03.2023

Decided on : 30.03.2023 .

R. Gurusinghe J

The petitioner has filed this application seeking a Writ of Certiorari to quash the decision manifested by the letter marked P12 and a Writ of Mandamus directing the 1st, 2nd, 3rd, and 4th respondents to implement the decision made by the letter marked P7.

1st, 2nd, 3rd, 4th and 5th respondents filed joint objections to the application, while the 6th respondent also filed objections to the application.

It is common ground that the land for which the petitioner seeks to have a permit, was previously given to one Gunasekera on a permit in terms of the provisions of the Land Development Ordinance. (LDO)

The petitioner requested for a permit to be granted to him for that land under the provisions of LDO, as the said Gunasekera had not cultivated on

the land. The position of the petitioner was that the Divisional Secretary (DS) of Wanathawilluwa had handed over to him the possession of the land shown as lot 1199 in plan no. 22, sometimes referred to as E-9, by way of a letter. A copy of the said letter dated 3.9.2003 was produced as P7 by the petitioner. P7 is only a letter and not a permit issued in terms of the provisions of the LDO. In terms of the provisions of section 25 of the LDO, every permit should substantially be in a prescribed form.

DS of Wanathawilluwa called for a report from the Grama Niladhari, regarding lot 1199 (E9) by the letter dated 3.7.2009, which was produced by the respondents marked 1R6.

In response to 1R6, the Grama Niladhari of the division, after an inspection of the land, reported facts to the DS in his letter dated 21.7.2009, which was produced and marked as 1R7. 1R7 states that the land was not cultivated, and no one resides on the land. However, it says that about 5 acres of the land was cultivated by one Upali Rupasinghe. The petitioner, in a counter affidavit, stated that it was manifested by 1R7 that the petitioner has cultivated on the land. Document P5, produced by the petitioner, reveals that Upali Rupasinghe was not a person who was claiming under the petitioner. Upali Rupasinghe had made a claim against the petitioner. The 5 acres of land was separated, and a different Lot number was given to that 5 acres. The report dated 21.3.2011, which was produced by the Grama Niladhari as 1R8, states that the land E-9 has not been cultivated, and as a result, the land is now like a jungle. In these circumstances, the DS of Wanathawilluwa sent a letter dated 14.11.2012 to the petitioner and to Upali, which was produced and marked 1R9. In 1R9, it was brought to the notice of the petitioner by the DS that it was revealed in the inquiry, where the petitioner had also participated, that the land had not been cultivated. The petitioner was informed that he had to take steps to develop the land within 90 days and informed the same to the Grama Niladhari.

In a letter dated 27.2.2013, the Grama Niladhari reported to the DS that the petitioner had not taken any steps to develop the land up to then. He further reported that due to this reason, other lands were also affected by wild elephants. This letter is produced and marked as 1R10.

The letter dated 11.10.2016, which was sent to the petitioner and the 6th respondent by the DS of Wanathawilluwa, was marked by the appellant as P12 and the same was produced by the respondent as 1R11. The petitioner seeks to quash the decision of the DS contained in that letter. The letter marked 1R11 reveals that there is a dispute between the petitioner and the 6th respondent regarding the land known as lot E-9. Further, the contents of the letter show that as the land belongs to the State, both parties should vacate the land. The petitioner and the 6th respondent were informed to provide all information with regard to the possession of the land and the lands belonging to their families. Further, it states that the application for a permit would be considered at a land kachcheri, which will be held in due course. P7 is not a permit issued under the LDO, and therefore, the petitioner is not a permit holder under the provisions of the LDO. The document, which was produced by the respondents, manifests that lot E-9 was not cultivated or developed by the petitioner. Even though the petitioner was asked to provide information regarding his possession of the land, he has failed to respond to the letter marked P12(1R.11); instead, he filed this application in this court on 30th November 2017, that is one year after such request was made by the DS.

The petitioner states that the 1st respondent had not given notice to him under section 106 of the LDO. Section 106 of the Ordinance requires the Government authority to issue a notice in the prescribed form asking the permit holder to show cause as to why his permit should not be cancelled. However, in the instant case, it is not required to issue such a notice to the petitioner as he was not given a permit in terms of the LDO. The mere possession does not entitle the petitioner to a permit in his name. The petitioner had not responded to the letter 1R9, which was issued on

14.11.2014. Even if the content of P12 is quashed, the petitioner is not a permit holder. The petitioner cannot seek for a Writ of Mandamus to issue a permit to him under the provisions of the LDO, as he has failed to respond to 1R9, which requested him to take steps within 90 days to develop the land and P12, which requested him to provide information regarding his possession to the land. In these circumstances, the 1st respondent has not breached the provisions of the LDO, as alleged by para 26 and 28 of the petition. Therefore, no public duty is owed to the petitioner by the DS.

For the aforementioned reasons, the application of the petitioner for a Writ of Certiorari and a Writ of Mandamus is refused. No costs.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.