

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

In the matter of an Application for Orders in the nature of Writs of Mandamus and in the nature of Writs of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. G. A. Dayapala,
Mihintalawa road,
Kurulugasweva, Galkulama,
Anuradhapura.

PETITIONER

CA No. CA/Writ/0314/2019

v.

1. M. S. Sajeeda Banu,
Divisional Secretary,
Divisional Secretariat,
Thirappane.
2. Mr. Gayantha Karunathilleke
The Minister,
Ministry of Land and Parliament
Reform, "Mihikathamedura"
Land Secretariat,
No: 1200/6, Rajamalwatte Road,
Battaramulla.
3. Mr. W. H. Karunaratne
The Secretary,
Ministry of Land and Parliament

Reform, “Mihikathamedura”
Land Secretariat,
No: 1200/6, Rajamalwatte Road,
Battaramulla.

4. Mrs. R.M.C.M. Herath
Commissioner General of Land,
Land Commissioner General ‘s
Department, “Mihikathamadura”,
No: 1200/6, Rajamalwatte Road,
Battaramulla.
5. Mrs. K. P. S. Premadasa
Assistant Commissioner of Land for
Anuradhapura District,
Land Commissioner General’s
Department, “Mihikathamadura”,
No. 1200/6, Rajamalwatte Road,
Battaramulla.
6. Hon. Attorney General
Attorney General’s Department,
Hulfstdorp,
Colombo 12.

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : Lakshan Dias for the Petitioner.

S. Wimalasena, DSG for 1st – 6th
Respondents.

ARGUED ON : 20.02.2023

DECIDED ON : 20.03.2023

M. Sampath K. B. Wijeratne J.

Introduction

The instant application emanates from the cancellation of permit bearing No. 279/31 (P 2) issued by the 1st Respondent under the Land Development Ordinance, as amended (hereinafter referred to as the ‘L.D.O.’).

The Petitioner *inter-alia* sought a writ of *certiorari* against the 1st Respondent quashing the decision to terminate the grant (*sic*) bearing No. 279/31 of the Petitioner as per ‘P 13’ and a writ of Mandamus against the 1st to 2nd Respondents to conduct a fair investigation and reissue the grant (*sic*) No. 279/31 to the Petitioner.

Factual matrix

According to the Petitioner, on or around 2005, the Petitioner succeeded to the land of his father. The Petitioner stated that on or about 28th December 2019 he became aware that his grant (*sic*) had been cancelled on or about 21st March 2018 on the ground of wrongful utilization of the land. The Petitioner stated that he had not received any notice of the cancellation until he requested the information pursuant to the Right to Information Act.

Subsequently, the Petitioner requested the Divisional Secretary to conduct an inquiry into the matter.¹ The Petitioner alleged that although he is entitled to a notice under Chapter VII (*sic*) of the L.D.O., he was not served notice pursuant to Section 90 read along with Section 88 (*sic*) of the L.D.O. The Petitioner stated that he paid acreage tax for the year 2019 without being aware of the cancellation and the government had accepted the tax.²

The learned Counsel for the Petitioner contended that in the aforementioned circumstances the 1st to 4th Respondents breached the procedure set out in the L.D.O. and the 1st Respondent acted arbitrarily violating the principles of

¹ ‘P15’.

² ‘P14’.

natural justice by terminating the grant (*sic*) No. 279/31 issued in favour of the Petitioner. Accordingly, the Petitioner submitted that the above decision is *ultra vires*.

Matters to be determined

The fundamental issues before the Court are whether there is an impropriety of procedure in cancellation of the permit issued to the Petitioner and whether the above decision of the 1st Respondent is *ultra vires*.

As it was correctly submitted by the 1st to 6th Respondents, ‘P 2’ is not a grant but a permit issued under the L.D.O. The Respondent stated that permit ‘P 2’ was given to one Podi Appuhamilage Dayapala whereas the Petitioner named in the caption and the person who has sworn the affidavit in support of the Petition is one G. A. Dayapala and therefore, the application is misconceived in law. In response, the Petitioner stated that the Petitioner's name was misprinted because of a technical error. In fact, in the caption of the affidavit and the declarant's name in the affidavit is printed as G. A. Dayapala whereas in fact it should have been P. A. Dayapala. However, on the Petitioner's national identification card submitted with the petition (‘P 2’), the Petitioner's name is Podi Appuhamilage Dayapala. In addition, in the counter affidavit filed by the Petitioner, the name of the declarant is rightly mentioned as Podi Appuhamilage Dayapala.

As such, I am inclined to accept that the error in the Petitioner's name in the affidavit is a genuine error and does not affect the identity of the Petitioner. Above all, the learned Deputy Solicitor General for the Respondents did not pursue the above issue at the argument.

Analysis

The Respondents admitted that the permit bearing No. 279/31 was issued to one Podi Appuhamilage Dayapala on the 4th March 1965, under the L.D.O.³. The Respondents stated that since the permit holder, Podi Appuhamilage Dayapala breached the conditions of the permit No. 179/31 (‘P 2’), same was cancelled pursuant to Sections 106 and 109 of the L.D.O. Accordingly, it was submitted that the permit (‘P 2’) was cancelled following the due process laid down in the L.D.O. Although, the Petitioner submitted that the permit holder

³ At paragraph 9 of the objections.

is entitled to formal notice pursuant to Chapter VII (*sic*) of the L.D.O.⁴, the process for issuing notices to a permit holder who does not meet the conditions of the permit is set out in Chapter VIII of the L.D.O.

Moreover, although it was submitted that he was not served a notice pursuant to Section 90 read along with Section 88, Sections 88 to 103 of the L.D.O. had been repealed as far back in 1969, by (Amendment) Act No. 16 of 1969. Therefore, it is clear that the Appellant based his application to this Court on legislative provisions that do not exist. Be that as it may, as it was correctly stated by the Respondents, the relevant Sections are Sections 106 and 109 of the L.D.O. that read as follows;

‘106. If it appears to the Government Agent that a permit-holder has failed to observe a condition of the permit, the Government Agent may issue a notice in the prescribed form intimating to such permit holder that his permit will be cancelled unless sufficient cause to the contrary is shown to the Government Agent on a date and place specified in such notice.’

‘109. (1) If the permit-holder fails to appear on the date and at the time and place specified in a notice issued under section 106, or appears and states that he has no cause to show why his permit should not be cancelled, the Government Agent may, if he is satisfied that there has been due service of such notice and that there has been a breach of any of the conditions of the permit, make order cancelling such permit but no such order shall be made until after the expiry of a period of twenty-eight days reckoned from the date specified in the notice issued under section 106.

(2) If, within a period of fourteen days reckoned from the date specified in the notice issued under section 106, the permit-holder satisfies the Government Agent that he has cause to show why his permit should not be cancelled and that he was prevented by accident, illness, misfortune or other unavoidable cause from appearing on the date and at the time and place specified in such notice, the Government Agent shall appoint another date, time and

⁴ At paragraph 29 of the Petition.

place for the purpose of enabling the permit-holder to show cause why his permit should not be cancelled.'

The notices issued under Section 106 of the L.D.O. are marked as 'R 3 (v)' to 'R 3 (ix)'. As it was stated in the argument, aforementioned notices were sent to the Petitioner, his wife and three children residing with him, calling for an inquiry to be held at the Thirappane Divisional Secretariat on the 24th January 2018, at 10.30 a.m. The date of the notices is 8th December 2017. The postal peon's endorsement dated 14th December 2017 on the copies of the envelopes in which the aforesaid notices were sent by registered post establishes that the persons to whom the letters are addressed have refused to accept them.

Section 107 provides that the date specified in the section 106 notification should not be less than 30 days from the date of issue of such notice on the permit holder. It is apparent from the above-mentioned facts that the Divisional Secretary provided the requisite thirty-day notice prior to the cancellation of the permit. In addition, the report of the inquiry held under the L.D.O., by the Divisional Secretary of Thirappane on 1st March 2018, confirms that since the petitioner refused to accept the notice issued in terms of Section 106 of the L.D.O, it was affixed on a lamp post in front of his house. In the course of the argument, the learned Counsel for the Petitioner submitted that the lamp post on which the notice was affixed was outside the subject property and therefore, does not comply with Section 108 (1) of the L.D.O. However, there is no material to show that the lamp post was not within the land. Further, in his Petition, the Petitioner did not allege that the lamp post was outside the land. All that was stated was that the notice was not seen either by him or his household.

In view of the above facts, it is my considered view that the Divisional Secretary has followed the procedure laid down in Sections 106, 107 and 109. of the L.D.O., before the permit was cancelled.

Thereafter, the order cancelling the permit was also sent to the Petitioner, his wife and three children under registered cover. The date of such notices is 2nd April 2018. Here again the endorsement of the postal peon dated 4th of April 2018 on the copies of the envelopes in which the order was sent establishes the fact that the recipients have refused to accept the notices of cancellation⁵.

⁵ *Vide* R 3 (x), R 3 (xi) and the other annexures.

According to the order cancelling the permit, the grounds for cancellation are the failure to reside on the land, failure to develop the land, alienation of the land and failure to possess the land. At the argument, the learned Deputy Solicitor General submitted to the Court that although four grounds for the cancellation are mentioned, violation of any of those grounds is sufficient to cause the cancellation. The Petitioner himself admitted that he constructed a building for the funeral endowment society and allowed it to be used by the society⁶. Accordingly, by his own admission it is established that the Petitioner breached conditions (xv) of the permit 'P 2'. From the above facts, it is clear that the 1st Respondent arrived at the impugned decision to cancel the permit, having followed the procedure laid down in the L.D.O.

Conclusion

In light of the above analysis, I am of the view that the 1st Respondent followed the procedure in the L.D.O. and availed the Petitioner an opportunity to be heard, prior to making the impugned order cancelling the permit. Nevertheless, the petitioner, through his own fault, has not made use of them.

In the result, I am of the view that the Petitioner is not entitled to the writ of certiorari and writ of mandamus prayed for in paragraphs (b) and (c) of the prayer of the petition.

I dismiss this application subject to a cost of Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL

⁶ At paragraph 10 of the petition.