

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

In the matter of an Application for Writs of
Certiorari and *Mandamus* under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0321/2019

Athukorala Kodithuwakkuge Chamal,
351/1, Raja Mawatha,
Kandasurindugama,
Kataragama.

Petitioner

Vs

1. National Housing Development Authority,
Sir Chiththampalam A Gardiner
Mawatha,
Colombo 02.
2. M. S. Weerasinghe,
General Manager,
National Housing Development Authority,
Sir Chiththampalam A Gardiner
Mawatha,
Colombo 02.
3. Nimal Ranasinghe,
District Manager,
National Housing Development Authority,
Matale.
4. L. R. E. Bandara
District Manager,
National Housing Development Authority,
Matale.

Formerly,
Senior District manager,
National Housing Development Authority,
Moneragala.

5. S. K. Hettiarachchi,
Manager,
National Housing Development Authority,
Sir Chiththampalam A Gardiner
Mawatha,
Colombo 02.

Formerly,
District manager,
National Housing Development Authority,
Moneragala.

6. Sajith Premadasa,
Minister of Housing and Constructions
and Cultural Affairs,
Ministry of Housing and Constructions
and Cultural Affairs,
2nd Floor,
“Sethsiripaya”,
Sri Jayawardanapura Kotte,
Battaramulla.

7. National Association of All Ceylon Driving
School Owners,
95/1, Broadway Building, Main Street,
Kalutara South.

8. H. K. M. Kevin Rajitha,
Notary Public,
Umankandura,
Diyathalawa.

9. D. S. A. Ranjana,
Licensed Surveyer,
Umankandura,
Diyathalawa.

10. S. M. P. P. Sanghakkara,
Surveyor General,
Survey Department,
150, Bernard Soyza Mawatha,
Colombo 05.

11. The Hon. Attorney General,
Attorney General's Department,
Superior Court Complex,
Hulfts Dorp,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: E. B. Atapattu, instructed by I. Kitulegoda for the
Petitioner.

A. Weerakoon, SC for the 1st to 6th and 11th Respondent.

Written Submissions on: 27.01.2023 by the Petitioner

02.02.2023 by the 1st to 5th and 8th
Respondent.

Decided on: 28.02.2023

MOHAMMED LAFFAR, J.

The main reliefs sought by the Petitioner in this Application, *inter alia*, are as follows

- I. A Writ of *Certiorari* quashing the decision of the 1st Respondent NHDA by resolution of the Board of Members of Directors to transfer the part of the said land bearing No.1968 of F.V.P Plan No.25 prepared by the Surveyor General dated 31.5.1993, to the 7th respondent, in extent of 25.22 perches out of 31.5 perches (document marked P150).
- II. To Grant and issue a mandate in the nature of a Writ of *Certiorari* quashing the said approval of the Minister of National Housing and Constructions to transfer the part of the said land bearing No.1968 of F.V.P Plan No.25, in extent of 25.22 perches out of 31.5 perches, to the 7th respondent. (Document marked "P151 ")
- III. To Grant and issue a mandate in the nature of a Writ of *Certiorari* quashing the deed attested by the 8th Respondent, Notary Public dated 24/10/2017 bearing No.274 to transfer the part of the said land bearing No.1968 of F.V.P Plan No.25 prepared by the Surveyor General dated 31.5.1993, in extent of 25.22 perches out of 31.5 perches, to the 7th Respondent. (Document marked "P 3").
- IV. To grant and issue a mandate in the nature of a Writ of *Certiorari* quashing the plan bearing No.2081B dated 23/06/2015 (Document marked "P152").

The precursory facts to the Application pursued are as follows.

At the very outset, the Petitioner, claims to have been prejudiced by the decision to transfer part of the stipulated land (25.22 perches out of 31.5 perches marked P3, P4) by the 1st Respondent, National Housing Development Authority, to the 7th Respondent National Association of All Ceylon Driving School Owners. The said land was purportedly enjoyed by the Petitioner for more than 18 years and was allegedly purchased by the Petitioner's father. However, no documented evidence of such a purchase has been averred by the Petitioner and as per paragraph 6 of the Petition, it is admitted by the Petitioner that the land was purchased by way of an informal agreement. The subject land of the matter at hand belongs to the 1st Respondent which was used to construct a housing scheme known as 'Katharagama Rajamawatha Housing Scheme'. The 1st Respondent built 35 houses out of the 41 plots of land, to which the Petitioner avers that he enjoyed 31.5 perches out of the remainder bare land (P1, P2). The Petitioner who is in occupancy of the land from the year 2000 onwards claims that he made a request for water and electricity connections which were denied as it was claimed that the Petitioner was an unauthorized occupant.

As the Petitioner was in unauthorized occupation of the said land, the 1st Respondent, in order to eject the Petitioner filed action under the State Land Recovery of Possession Act, No.7 of 1979 in the Magistrate Courts of Tissamaharama in case bearing no:57927 (1R3). On 27.09.2019, the learned Magistrate of Tissamaharama delivered the Order to eject the Petitioner as he is in unauthorized occupation of the land in dispute. Being aggrieved by the said Order the Petitioner preferred an appeal to the Provincial High Court of Hambanthota which was dismissed and thereafter the appeal lodged by the Petitioner in the Court of Appeal was also dismissed. In this

scenario it is well established that the Petitioner is in unauthorized occupation of the land in suit. At this juncture it is pertinent to note that the petitioner has deliberately suppressed the above material facts to this Court.

In lieu of this, the Petitioner made multiple requests to be included in the Legalization of Squatters Program. Heeding to such a request, the 1st Respondent offered the Petitioner the option of purchasing 6 purchases out of the occupied land of 31.5 Perches for the purchase price of rupees 600,000/=. The Petitioner in denouncing such an offer, states that he has been singled out and prejudiced as, whilst he is being charged at rupees 100,000/= a perch, other land occupants have been given the land for at a much lower rate (P66, P67, P68)

On 21.05.2019, a group of persons, agents of the 7th Respondent, occupied the land the Petitioner claims ownership to and attempted to erect a boundary fence reserving a larger part of the land. Upon inquiry by the Petitioner as to why they were erecting a boundary wall, it was stated by the agents of the 7th Respondent that they are doing so as they have purchased the land. In response to this the Petitioner filed a complaint with the Katharagama Police Station after informing the A.S.P (P153). It is averred by the Petitioner that he was unaware of such a transfer until the agents of the 7th Respondent entered the land. It is averred that the said transfer without being communicated to him is fraudulent, arbitrary and amounts to *ultra vires*. It is also stated that the Petitioner has a Legitimate Expectation to receive the land after being entered into the legalization of squatters' program.

In view of the above facts, the Respondents submits that the land which the Petitioner has occupied has been done so on an unauthorized basis. Further, as the Petitioner was not considered to be a low-income earner the land has to be disposed to the Petitioner by charging the value of the land, thus the 6 perches was valued at rupees 600,000/= by the Valuation Department (1R4, 1R5, 1R6). Thus, as per Circular No 2014/01 the Petitioner is only entitled to obtain 6 perches from the land in question. In response to the averments that the transfer was made without being communicated to the Petitioner is fraudulent, arbitrary and amounts to *ultra vires*, it is argued by the Respondents that the Board of Directors of the 1st Respondent approved the decision to dispose 25.22 perches of the said land to the 7th Respondent with approval of the subject Minister. Once the due payments were settled by the 7th Respondent, the said portion of land was disposed (1R15). Thus, the reasoning set out for such a transfer has been provided for by the Deputy Chairman of the 1st Respondent Committee as being that, post a meeting with H. E. the President, it was directed that such land should not be disposed other than for the wellbeing of the pilgrims who visit Katharagama, thus as a result this land has been transferred to the 7th Respondent to provide accommodation to devotees who visit Katharagama (1R23).

Taking cognizance to the above facts, this Court views that as the land in question is State land the discretion of transferring the land rests within State with adherence to circumstantial facts, and circulars, legislations and direction by the State. In view of such, the said land was transferred to the 7th Respondent in line with the view of H. E. The President, who post a meeting directed that such bare lands should not be disposed other than for the wellbeing of the

pilgrims who visit Katharagama. Thus, the land was transferred to the 7th Respondent for the purpose of providing accommodation to pilgrims. This necessity emanates from the objectives provided for in Section 4(h) and 4(i) of the National Housing Development Authority Act, No. 17 of 1979 which reads as follows

4. The objects of the Authority shall Up-

(a) to directly engage itself in the construction of flats, houses and other living accommodation or buildings;

(b) to formulate schemes to establish housing development projects in order to alleviate the housing shortage;

(c) to cause the clearance of slum and shanty areas and the re-development of such areas;

(d) to promote housing development;

(e) to develop or re-develop land for the carrying out of any of the objects of the Authority;

(f) to make land available to any person for housing development;

(g) to provide financial or other assistance to persons engaged in any activity which is similar to any of the objects of the Authority;

(h) to conduct, promote and co-ordinate activities in relation to all aspects of housing development; and

(i) to do all such other acts as may be necessary or conducive to the attainment of any or all of the above objects.

Thereby, it is in the best interest of the State that the said land being transferred to the 7th Respondent would be in line with the provisions

of the National Housing Development Authority Act, No. 17 of 1979 in order to attain the said policy objectives. Thereby, I am of the view that the Respondent Committee has taken appropriate steps to make such a transfer within the 4 corners of the legal sphere and has not done so capriciously. Further, the 1st Respondent Committee has not acted in a manner that's arbitrary, unpredictable, or whimsical, that is not based on reason, evidence, or established legal standards. A decision or action that is deemed to be capricious is one that is made without proper consideration of relevant facts or without a rational basis, the Respondent Committee has not acted such, as they have taken cognizance to the fact that the transfer of the land to the 7th Respondent was done so to further the policy objectives.

Furthermore, it is undisputed that the Petitioner is deemed an unauthorized occupant by an Order dictated by the Magistrate of Tissamaharama on 27.09.2019 in case bearing No. 57297 which directs the Petitioner to be evicted from the land as per the provisions of the Sate Land (Recovery of Possession) Act, No 7 of 1979 (1R3). Thus, it is clear to this Court that despite an ejectment Order by the Magistrate of Tissamaharama, the Petitioner is still in occupation of the said land without removing himself. Despite such an eviction Order he is seeking redress from this Court, thus going against the clean hands doctrine where the Applicant must seek the assistance of Court with clean hands. Here the Petitioner has not done so, he has come to seek relief from this Court with knowledge that he is an unauthorized occupier in line with an eviction Order by the Learned Magistrate.

The doctrine of clean hands is a legal principle that has long been recognized in common law jurisdictions, including in administrative law. The doctrine is premised on the idea that a person who seeks

the aid of the Court must have clean hands, meaning that they must not have engaged in any wrongful or illegal conduct themselves.

The doctrine of clean hands has its roots in equity, a branch of common law that seeks to prevent unfairness or injustice. The doctrine of clean hands was one of the principles of equity that evolved over time. It was based on the maxim *“he who comes into equity must come with clean hands.”* The maxim is premised on the idea that a person who seeks the aid of the Court must not have engaged in any wrongful conduct that would disqualify them from receiving relief.

The application of the principle has been extrapolated into the Sri Lankan legal sphere through cases such as **Gamini Dissanayake v. M. C. M. Kaleel and Others**¹ where eight members of a political party were expelled from the party for signing an impeachment motion against the President who was their party leader, without a hearing. The decision was challenged. The Supreme Court held that two out of the eight Members of the Parliament who were Cabinet Ministers were guilty of unmeritorious conduct for violating the principle of collective responsibility and therefore were disentitled from obtaining relief due to the lack of clean hands.

Per Fernando J. : *“It is within the discretion of the Court where to grant him such a remedy or not. He may be debarred from relief if he has acquiesced in the invalidity or has waived it. If he has not come with due diligence and ask for it to be set aside, he may be sent away with nothing.”*

¹ 1993 2SLR 135

Further, in **Borella Private Hospital v. Bandaranayake and Two Others**², K. Sripavan J. observed that, the writ of certiorari and mandamus being discretionary remedies will not be granted where the party applying lacks *uberrima fide*.

Thereby as per the above observations, it is evident that the Petitioner by failing to take cognizance to the fact that he is an illegal squatter that has been served a notice of eviction cannot deem himself to have clean hands before this Court.

Returning to the previous observation on suppression of material facts, it is clear that the Petitioner has suppressed the fact that there was an Order given by the learned Magistrate of Tissamaharama against the Petitioner for his eviction. I view that this is a salient material fact for the Application at hand, that has been deliberately omitted by the Petitioner. Suppression of material facts to the Court refers to intentionally withholding or concealing information that is crucial or relevant to a legal proceeding. In legal terms, material facts are those that are relevant and significant to a case and would influence a reasonable person's decision.

It is trite law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in **W. S. Alphonso Appuhamy v. Hettiarachchi**³

"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is

² 2005 (1) Appellate Law Recorder 27

³ 1973 [77 N.L.R. 131 at 135,6]

laid down in the case of the King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

And further, Siva Selliah J's view in **Sarath Hulangamuwa v. Siriwardena**⁴

"A petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to this Court, bare every material fact so that the discretion of this Court is not wrongly invoked or exercised. In the instant case, the fact that the petitioner had a residence at Dehiwala is indeed a material fact which has an important bearing on the question of the genuineness of the residence of the petitioner at the annexe and on whether this Court should exercise its discretion to quash the order

⁴ (1986) 1 SLR 275

complained of as unjust and discriminatory. On this ground to the application must be dismissed for lack of uberrima fides.”

Taking into consideration all the above, it is my view that the said transfer by the 1st Respondent has been done *bona fide* in order to further the policy objectives of the National Housing Development Authority Act, No. 17 of 1979. Furthermore, a remedy by way of Writs cannot be granted to the Petitioner due to the breach of the clean hands doctrine in tandem with suppression of material facts.

For the foregoing reasons, I hold that the Application made by the Petitioner is liable to be dismissed. Thus, the Application is dismissed. Taking cognizance to the facts and circumstances of the Application this Court is of the view that the Application should be dismissed with cost fixed at Rupees 75,000 payable by the Petitioner to the 1st Respondent.

Application dismissed.

JUDGE OF THE COURT OF APPEAL