

**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 Writ of Certiorari and Writ of Mandamus under and in terms of Article 140 of the Constitution.

C.A. (Writ) Application No.

176/2020

Asoka Kularatne,
No. 625/4, Sri Wijaya Mawatha,
Arawwala,
Pannipitiya.

PETITIONER

Vs.

1. Bope-Poddala Pradeshiya Sabha,
Kalegana,
Galle.
2. Chairman,
Bope-Poddala
Pradeshiya Sabha,
Kalegana, Galle.
3. Secretary,
Bope-Poddala
Pradeshiya Sabha,
Kalegana, Galle.
4. Urban Development Authority,
6th & 7th Floors, Sethsiripaya,
Battaramulla.
5. Director
(Southern Province),
Urban Development Authority,
6th & 7th Floors, Sethsiripaya,
Battaramulla.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

Counsel:

Kapila Liyanagamage for the Petitioner

Sanjeeva Dasanayaka with Dammika Jiminige for the 1st to 3rd Respondents.

R. Aluwihare, State Counsel for the 4th and 5th Respondents

Written submissions tendered on:

08.12.2022 by the Petitioner

12.12.2022 by the 1st, 2nd and 3rd Respondents

Argued on: 25.11.2022

Decided on: 12.01.2023

M. T. Mohammed Laffar, J.

The Petitioner to this Writ Application is seeking a mandate in the nature of a Writ of Certiorari quashing the decision of the 1st and/or 2nd and/or 3rd Respondents contained in the letter dated 12-06-2018 marked as P14 to temporarily cancel the Development Permit dated 12-02-2018 marked as P11 and a Mandate in the nature of Writ of Mandamus directing the 1st and/or 2nd and/or 3rd Respondents to restore the said Development Permit.

As depicted in the Deeds marked as P1 to P6, the Petitioner to this application is the owner of an allotment of land containing an extent of 4 Acres situated in Kapuhempala, Bope-Poddala, Galle. By the Gazette Notification dated 11-06-2010 marked as P7, the said land had been acquired by the State, and subsequently, had been divested. As per the document marked P7, the possession of the said land had been handed over to the Petitioner by the Division Secretary of Bope-Poddala on 17-05-2017 (Vide-P8). The said land is depicted as Lot A in plan No. 1253 dated 07-10-2017 made by G.H.B. Manil De Silva, Licensed Surveyor marked P10. Thereupon, pursuant to an application made by the Petitioner, the 5th Respondent issued a Development Permit dated 29-11-2017 marked as P9 to the said land. Thereafter, the Petitioner caused the said allotment

of land depicted as Lot A in plan marked P10 to be subdivided into several allotments of land by plan No. 187 dated 06-01-2018 made by A.W. Perera, Licensed Surveyor marked P12. On the application made by the Petitioner, the 3rd Respondent issued a Development Permit dated 12-02-2018 marked as P11 for subdivision of the said allotments of land. Thereafter, on 27-04-2018, several persons instituted an action bearing No. SP/3631 in the District Court of Galle challenging the aforesaid divesting Order marked as P7. A copy of the plaint of the said case is marked and produced as P13. Accordingly, by letter dated 12-06-2018, the 2nd Respondent informed the Petitioner that in view of the said case bearing No. SP/3631, a decision has been taken to temporarily cancel the said Development Permit marked P11, and further action in respect of the same will be taken after the conclusion of the said case. The said letter is marked as P14.

By Order dated 04-01-2019, the learned Additional District Judge of Galle dismissed the said action, and thereupon, the appeal preferred against the said Order was also dismissed on 19-06-2019 by the Civil Appellate High Court of Galle. The Order of the District Court is marked as P15 and the Order of the Civil Appellate High Court is marked as P16.

Thereafter, the Petitioner, through his Attorney-at-law, by letter dated 14-10-2019 marked as P17, requested the 2nd Respondent to restore the Development Permit marked P11. In response to the said letter marked P17, the 2nd Respondent by letter dated 28-11-2019 marked P18, informed the Petitioner that there is a complaint made by the former Chairman of the 1st Respondent to the Criminal Investigation Department in respect of the land in dispute, and therefore, no action can be taken until a final decision is received from the Criminal Investigation Department. The Petitioner has submitted a letter dated 25-11-2019 marked as P19, dispatched by the Criminal Investigation Department to the 2nd Respondent, stating that the Hon. Attorney General has advised that no criminal charge can be maintained against the Petitioner and therefore, no further action will be taken in the said investigation.

In this scenario, the Petitioner by letters dated 23-12-2019 and 07-03-2020 marked as P20 and P21 requested the 2nd Respondent to restore the Development Permit marked P11, whereas the 2nd Respondent failed to respond to those letters.

In these respects, the Petitioner asserts that he has a proprietary right and legitimate expectation to develop his land as per the Development Permit marked P11, and without any reasonable and justifiable grounds the 1st, 2nd and 3rd Respondents have prevented the Petitioner from developing his land by temporarily canceling the Development Permit marked P11, which is illegal, unlawful and *ultra-vires*. The Petitioner further asserts that the refusal to restore the said Permit by the 1st, 2nd and 3rd Respondents is unreasonable, arbitrary, illegal and tainted by malice.

Alex Carroll, *Constitutional and Administrative Law*, (9th edn, Pearson 2017) p 322.

“A government official who causes injury through a deliberate misuse of power commits the tort of misfeasance in public office. Some conscious or malicious element of abuse must be present. Also, the perpetrator must have intended to inflict injury or have been aware that it would be the likely consequence of their actions. In Three Rivers District Council v Bank of England (No. 3) [1996] 3 All ER 558, the tort was said to be committed where a public officer:

(a) performed or omitted to perform an act with the object of injuring the plaintiff (i.e. where there was targeted malice);

(b) performed an act which he knew or ought to have known he had no power to perform and which he knew would or could injure the plaintiff.”

In those circumstances, the Petitioner is seeking a mandate in the nature of a Writ of Certiorari quashing the decision of the 1st and/or 2nd and/or 3rd Respondents contained in the letter dated 12-06-2018 marked P14 to temporarily cancel the Development Permit dated 12-02-2018 marked P11 and a Mandate in the nature of Writ of Mandamus directing the 1st and/or 2nd and/or 3rd Respondents to restore the said Development

Permit. Upon consent of the parties, on 25-11-2022, the 4th and 5th Respondents were released from the proceedings.

The contention of the 1st, 2nd and 3rd Respondents, in a nutshell, is that there was an outcry by people of the area to acquire the land in dispute to the Government. As a result of the said public outcry, the Bope-Poddala Pradeshiya Sabah passed a resolution to take steps to acquire the land in suit to bestow the same to the Kapuhempala Nandimithra School.

Admittedly, the Petitioner is the owner of the land in dispute, and therefore, he has the proprietary right over the same. The Petitioner is entitled to possess, enjoy and alienate the said property. Merely because, some persons had instituted an action in the District Court of Galle pertaining to the property in dispute, unless there is an interim injunction issued by the Court, the Respondents have no legal right to suspend the Development Permit marked as P11. However, as the said action filed in the District Court of Galle is concluded, there is a duty cast upon the 1st, 2nd and 3rd Respondents to restore the Development Permit as they have already promised in P14. The attention of this Court is drawn to the fact that the only reason advanced by the Respondents to temporarily cancel the Development Permit was the said pending District Court case. Since the said action was dismissed both by the District Court and the Civil Appellate High Court, there is no basis for the Respondents to cancel/suspend the Development Permit anymore.

Moreover, the decision, taken up by the Respondents not to restore the said Development Permit on the basis that there is a complaint made by the former Chairman of the 1st Respondent to the Criminal Investigation Department in respect of the land in dispute is also baseless and devoid of merits. The Respondents have no legal right to prevent the Petitioner from enjoying his proprietary right over the property in dispute in view of the complaint made by someone to the Criminal Investigation Department. It is pertinent to be noted that, even after the decision of the Hon. Attorney General

stating that no criminal charge can be maintained against the Petitioner, the Respondents have not restored the Permit marked P11, which substantiates the facts that the Respondents are acting in *mala-fide* towards the Petitioner. In these circumstances, it is the view of this Court that the decision of the Respondents to cancel/suspend the Development Permit marked P11 is illegal, arbitrary and unreasonable.

In the case of *Podimahatmaya V. The Land Reform Commission and Another*¹, Justice Palakidnar ruled as follows;

“This is an unreasonable state of affairs when one considers that one loses one's proprietary interest under legal compulsion of public policy and one is not able to salvage what he could legally retain in the circumstances. The administrative authority cannot act in a manner prejudicial to a person who has a right under the statute to retain his minimum fifty acres under the law.”

This Court declined to accept the contention of the Respondents that due to an outcry by the people of the area to acquire the land in dispute to the Government, the Bope-Poddala Pradeshiya Sabah passed a resolution to take steps to acquire the land in suit to bestow the same to the Kapuhempala Nandimithra School. It is to be noted that because of the public outcry, the Respondents have no right to prevent the Petitioner from enjoying his proprietary lawful right over his land.

This Court is mindful of the fact that, if the land in dispute is acquired by the State, the Petitioner will be awarded compensation. However, the Petitioner is not entitled to compensation as the land in suit is not properly acquired by the State. And also, the Petitioner is prevented from developing his land as well, which is unreasonable and illegal. Having scrutinized the conduct of the said Respondents, it is well established

¹ [1990] 2 Sri L.R. 416.

that the Respondents are acting in *mala-fide* towards the Petitioner. As such, the Petitioner is entitled to the reliefs as prayed for in the prayers to the Petition.

For the foregoing reasons, a mandate in the nature of a Writ of Certiorari quashing the decision of the 1st and/or 2nd and/or 3rd Respondents contained in the letter dated 12-06-2018 marked P14 to temporarily cancel the Development Permit dated 12-02-2018 marked P11 and a Mandate in the nature of a Writ of Mandamus directing the 1st and/or 2nd and/or 3rd Respondents to restore the said Development Permit are issued. The 1st, 2nd and 3rd Respondents are ordered to pay a sum of Rs. 300,000/- to the Petitioner as costs of this application.

Application allowed with costs.

JUDGE OF THE COURT OF APPEAL