

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

1. Yashodha Enterprises (Pvt) Ltd,
No. 282 C, Galle Road, Colombo-03.
2. Yasasiri Kasthuriarachchi,
Director,
Yashodha Enterprises (Pvt) Ltd,
No. 282 C, Galle Road, Colombo-03.

CA/WRIT/622/2021

PETITIONERS

Vs.

1. Bope Poddala Pradeshiya Sabha.
2. Dilruk Niranjana Abeykoon,
Chairman,
Bope Poddala Pradeshiya Sabha.
3. Janaka Bandara Tennakoon,
Minister of Public Administration,
Provincial Councils and Local
Government,
Ministry of Public Administration,
Provincial Councils and Local
Government,
Independence Square,
Colombo-07.

4. Keerthi Gamage,
Land Commissioner General,
Land Commissioner General's
Department,
"Mihikatha Medura"
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
5. W.S. Sathyananda,
Divisional Secretary,
Divisional Secretariat- Four Gravets,
Galle.
6. Hon. Attorney General,
Attorney General's Department,
Colombo-12.

RESPONDENTS

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Anura Meddegoda PC with R.Y.D Jayasekera, Nadeesha Kannangara and Isuru Deshapriya for the Petitioners.

Sanjewa Dasanayake with Nethma Thilakarathne, Nathasha Fernando for the
1st and 2nd Respondents.

Nayomi Kahawita, SC for the 3rd- 6th Respondents.

Written submissions: Petitioners- 05.06.2023

1st and 2nd Respondents- 08.06.2023

Decided on: 05.07.2023

Sobhitha Rajakaruna J.

All learned Counsel who appeared for the Petitioners as well as for the Respondents on 14.03.2023 agreed that the instant Application be dealt with and determined solely on the basis of written submissions and thereupon this Court made orders for the filing of written submissions and decided to determine the matter without hearing oral submissions.

The Petitioners plead that the 1st Petitioner became the owner of both moveable and immovable assets of a formerly state-owned enterprise, named Gintota Plywood Factory, under and by virtue of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987. The Petitioners in proof of their title to the land have tendered a copy of a Grant issued by the State on the 03.04.2018. The 2nd Petitioner has caused the land, morefully described in the schedule to 'P9' ('subject land'), to be resurveyed and subdivided into three allotments and apparently the said subdivision has been approved by the 1st and 2nd Respondents. Anyhow, the 1st Respondent Pradeshiya Sabha ('Pradeshiya Sabha') by virtue of the letter dated 04.12.2019 ('P16') has informed the 2nd Petitioner that the certificates of subdivision issued in respect of plans marked 'P12'- 'P15' had been suspended with immediate effect. The Petitioners are primarily seeking a mandate in the nature of a writ of certiorari quashing such decision of the 1st and 2nd Respondents to suspend the relevant certificates of subdivision.

The reasons given by the 2nd Respondent in the said letter marked 'P16' to suspend temporarily the said certificates of subdivision are twofold. Those reasons are:

- i. The unanimous decision of the Pradeshiya Sabha not to auction the subject land.
- ii. The protests of the residents of the area.

What needs resolution by this court is to examine whether the above two reasons are ultra vires/ illegal/ unfair/ unreasonable/ malicious as pleaded by the Petitioners.

The Land Commissioner General by his letter dated 27.03.2019 ('P16a') has informed the Managing Director of the 1st Petitioner Company that the alienation of the land subjected to the aforesaid grant has been effected under Section 2 of the State Lands Ordinance and

accordingly, the said subject land can be considered a private land. The Land Commissioner General by his letter dated 12.12.2019 ('P17') has communicated the same information to the Pradeshiya Sabha. The Pradeshiya Sabha approved eight plans by which the subdivisions have been authorized. The plan numbers and dates of such approval are described in the letter marked 'P16' (and the annexure to 'P16'). The Petitioners have annexed several receipts marked 'P25' in proof of payment of assessment tax in respect of the subject land.

The contention of the 1st and 2nd Respondents is that the suspension of permission to subdivide the subject land is well within the powers of the Local Authority. Referring to the letter marked 'P22' the said 1st and 2nd Respondents submit that an environmental resort was to be constructed on the subject land as a result of a unanimous decision taken by the Pradeshiya Sabha, based on a proposal submitted to the Pradeshiya Sabha to reacquire the subject land. By letter dated 20.12.2020 ('1R3') Land Commissioner General has informed the District Secretary, Galle, that there is a possibility of acquiring the subject land, if the Pradeshiya Sabha deems it necessary. However, it is apparent that no steps have been taken by the Ministry of Lands to acquire the subject land and it is obvious that such acquisition should be carried out under the provisions of the Land Acquisition Act.

The purported unanimous decision of the Pradeshiya Sabha has been taken on the 17.12.2019 and no evidence has been submitted to Court in view of implementing the said decision during the last three and a half years. It appears that any final determination of this Application would not be an impediment to the Respondents to proceed with acquisition, if necessary, following the correct procedure under the law.

Section 18 of the Interpretation Ordinance No. 21 of 1901 stipulates the manner in which any proclamation, order, or notification issued by an authority upon whom such power is conferred to do so, may be amended, varied or rescinded. Although a public authority is empowered to change his or her original decision under the provisions of the said Section 18, legitimate reasons should be given prominence. I take the view that mere approval by the Pradeshiya Sabha for a development activity is not sufficient and it is not reasonable to vary, rescind or suspend a valid decision of a public authority, when such resolution or the approval is not adequately and appropriately implemented within a reasonable period of time for the benefit of the public. Thus, the circumstances of this case do not warrant this Court to accept

the aforesaid first reason given by the Pradeshiya Sabha as a sufficient and reasonable ground to vary or suspend its previous decision.

Now I advert to the second reason given by the 1st and 2nd Respondents to suspend their previous approval for subdivision of the subject land. In the letter marked 'P16' the other reason given by the 2nd Respondent was the protests of the residents of the area. The same reason has been narrated in the written submissions filed on behalf of the 1st and 2nd Respondents as the 'public outcry in the form of protests'.

Moisés Arce and Roberta Rice, in their book titled *'Protest and Democracy'*, (*University of Calgary Press, 2019*) states that social protest plays an important role in democracies. 'In the current era, in fact, protest movements have joined together numerous groups from civil society, including Indigenous peoples, women's organizations, students, human rights groups, landless small farmers, informal and unemployed workers, as well as the traditional labor unions. These movements have also displayed a broad repertoire of contentious activity, such as attacks on government buildings and politicians' houses, national and provincial roadblocks, the banging of pots and pans, the establishment of camps in civic squares, and urban riots. These changes involving actors and types of protest actions are examples of the shifting nature of anti-government mobilizations in the context of widespread economic liberalization (Arce 2008; Arce and Bellinger 2007; Bellinger and Arce 2011; Rice 2012). Social media has also enabled mobilizations to spread very quickly (see Larson, chapter 4), and possibly contribute to the formation of coalitions that cut across classes, the urban and rural divide, and environmental and nationalistic discourses.' (Vide- the same e-book titled 'Protest and Democracy', p.10)

Professor Jacquelin van Stekelenburg of Vrije Universiteit Amsterdam (VU Amsterdam) (*LSE Blog, 30.11.2015*) queries why do people take to the streets, and whether it makes a difference? She believes that interwoven issues of grievances, efficacy, identity, emotions and social embeddedness help answer such questions. She further states that assessing protest

outcomes is notoriously difficult and she has identified three important mechanisms of influence: (a) disruption, (b) facilitation and (c) persuasion.¹

The task of this Court at this juncture is not to examine the legitimacy of the purported public outcry but to assay whether such public protest is reasonable enough, in line with the above concepts on public protest, to effect a policy change by the Pradeshiya Sabha. It is important to note that the 1st and 2nd Respondents have not submitted any evidence in respect of the nature or the behaviour of the alleged public protest which has taken place and this Court is unable to ascertain whether such protests attract the mechanisms identified above. Similarly, such Respondents have not made an application to this Court in order to add any parties to enable this Court to consider the grievances of a particular group of protestors. It can be clearly assumed according to pleadings that the alleged public protest was not against any decision of the 1st and 2nd Respondents but perhaps to persuade the Petitioners not to sell the subject land to a third person. In other words, it was not to facilitate the Pradeshiya Sabha to change its' previous decision to permit subdivision of the subject land although the Pradeshiya Sabha has suspended its original decision on the pretext of the purported public protest. It is paramount that the Land Commissioner General has specifically declared that the subject land can be considered private land.

It is obvious that the original decision of the 1st and 2nd Respondents permitting the subdivision is not under judicial review in the instant Application and the Petitioners have sought judicial review only against the decision to suspend the original decision which permitted subdivision. The 1st and 2nd Respondents have not pleaded that the said original decision permitting the subdivision had been made by mistake or erroneously. In my view, public protest should not be used as a persuasion power to change a legitimate policy or a lawful decision unless the true grievance of the protestors will be established with satisfactory or acceptable reasons before this Court. The pleadings of the Petitioners illustrate the potential pitfalls of varying the original decision by the Pradeshiya Sabha on a finding of clear inconsistency. The 1st and 2nd Respondents have failed in crafting a legitimate defence against the Petitioners based on the purported public protest to vary their original decision which permitted the respective

¹ Article titled 'People protest for many reasons, yet we don't know how effective protests are'
<https://blogs.lse.ac.uk/politicsandpolicy/how-effective-are-protests/>

subdivision. In these circumstances, I am of the view that the reason given by the 1st and 2nd Respondents, on the basis of the purported public protest, to vary or suspend their original decision is not reasonable and further, this is a fit case to employ the doctrine of ultra vires against the impugned decisions.

In light of the above findings, I take the view that the decisions of the 2nd Respondent which are reflected in the letters dated 04.12.2019 ('P16') and 05.12.2019 (annexure to the said 'P16') are unreasonable and irrational. Thus, I proceed to grant only a writ of certiorari as prayed for in paragraph (c) of the Prayer of the Petition of the Petitioners. Anyhow, I am not inclined to issue a writ of mandamus as prayed for in the Prayer of the Petition as the Pradeshiya Sabha is duty bound to fulfil any lawful request made by the Petitioners. No relief has been sought against the 3rd to 6th Respondents by the Petitioners.

Application partly allowed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal