

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

C.A. (Writ) Application

No: 227/15

1. W. Priyarathne
2. Pradeep Kumara Pitarathne,

Both of No. 102/15, 1st Lane,
Jayantha Mawatha,
Anuradhapura

Petitioners

Vs.

1. Anuradhapura Municipal Council,
Maithreepala Senanayaka Mawatha,
Anuradhapura.
2. Sampath Rohana Dharmadasa,
Municipal Commissioner,
Anuradhapura Municipal Council
Maithreepala Senanayaka Mawatha,
Anuradhapura.
3. Mayor. Anuradhapura Municipal Council,
Maithreepala Senanayaka Mawatha,

Anuradhapura.

4. Divisional Secretary
Divisional Secretariat's Office
(Neganahira Nuwaragam palatha)
Anuradhapura.
5. Provincial Commissioner of Lands,
North Central Province,
Kachcheri Building
Anuradhapura
6. Director, Urban Development Authority,
Provincial Office,
Anuradhapura.
7. Urban Development Authority,
Provincial Office,
Anuradhapura.
8. Kande Gedara Wimalawathie
C/O Dammikaramaya,
Jayanthi Mawatha,
Anuradhapura

And also

No. 488/10, Maithreepala Senanayaka
Mawatha,
Anuradhapura.

Respondents.

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Saliya Peiris, PC with Thanuka Nandasiri
For the Petitioner
Mihiri de Alwis, SC For the 4th to 7th Respondents
Harith de Mel with Vihitha Lekamge
For the 8th Respondent, Instructed by Piyumi Kumari

Argued on : 15.06.2023

Decided on : 27.07.2023

R. Gurusinghe J

The petitioners in this application are seeking a mandate of Certiorari quashing the decisions of the 1st, 2nd and 3rd respondents to demolish the petitioner's building and a mandate of a writ of Certiorari quashing the lease agreement between the 1st respondent and 8th respondent marked P12, P6 and P8 C.

The facts as submitted in the petition are briefly as follows:

The 1st petitioner was born and permanently resided in the Kahatagasdigiliya area. As that area was affected by civil war, the petitioners occupied state land at the place mentioned in the caption of the petition on which the questioned building was constructed. The land was earlier occupied by one

P.A. Sominona. The petitioner paid a certain sum of money to her and obtained possession of the land and built a house in it and occupied it since 1994. The said Sominona had paid rates to the Municipal Council of Anuradhapura (the first respondent).

The Divisional Secretary of Nagenahira Nuwaragam Palatha instituted proceedings in the Magistrate's Court of Anuradhapura to evict the petitioners in terms of the State Lands (Recovery of Possession) Act No 7 of 1979. The Learned Magistrate of Anuradhapura, in the case bearing No. 29945, decided against the petitioner. The 1st petitioner then preferred a revision application to the Provincial High Court.

The petitioner has built a house in Lot 6 of P4. Later the 2nd petitioner, the son of the 1st Petitioner, built a house on the said land.

By letter dated 27.01.2006, the 6th respondent informed the petitioner to remove the building bearing no. 104/36A since the said construction is unauthorised and was further informed that if the petitioner failed to remove his unauthorised construction, the 6th and 7th respondents would take steps to demolish the said building in terms of the Urban Development Authority Act No. 41 of 1978.

The petitioner thereafter took steps to obtain the approval of 1st respondent. Then the 6th respondent did not proceed to take action in terms of the Urban Development Authority Act.

By letter dated 29.03.2007, the 6th respondent informed the petitioner to remove the building assessment No. 104/36 A, since it is unauthorized, and further informed that if the petitioner failed to remove his unauthorized construction, the 6th and 7th respondents would take steps to remove the building in terms of the Urban Development Authority Act. The petitioner again informed the 6th respondent that he had applied for the approval of the 1st respondent.

On 11.12.2012, the petitioner was served a notice under section 42A (2) of the Municipal Council Ordinance, which notice contained that the petitioner's building bearing no. 104/36A should be demolished within 14 days of the said notice. That notice was produced marked P12. Further, the petitioner states that the construction was not an unauthorized construction.

The petitioners are seeking a writ of certiorari to quash the decision of the 1st, 2nd and 3rd respondents to demolish the building referred to in P12 and a writ of certiorari to quash the lease agreements of the 8th respondent marked P6 and P8 C.

The 1st respondent filed objections and stated that the petitioner had not obtained any authority to build the constructions in question. The petitioners only obtained an application and there was no approval for the construction of a building by the 1st respondent. The 6th respondent has admitted that the letters marked P9A, P9B and P9C were issued to the 1st petitioner. However, the 6th respondent further stated that P9C was issued based on documents that were submitted by the 1st petitioner at the site inspection. 6th and 7th respondents also deny that they gave permits to the petitioners to construct a building.

It is common ground that the land on which the petitioners' constructions stand is state land. The petitioner is not a permit holder or a grantee for that state land. Therefore, the petitioner has no legal right, title, or interest in the subject land.

The action instituted by the 4th respondent under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 was decided against the petitioners. Even though the petitioners' position is that the decision of the Learned Magistrate was set aside by the Provincial High Court, no certified copy of such decision is produced by the petitioner.

The petitioner has not submitted at least a copy of a permit issued to him for the construction of a building. If the petitioner has constructed a building having a permit to do so, he should have also possessed a certificate of conformity from the Municipal Council. However, the petitioner has failed to produce a certificate of conformity or any letter to that effect issued by the Municipal Council. The position of the 1st and 6th respondents is that the building constructed by the petitioner is an unauthorized construction. The petitioner has failed to produce evidence to show that he has ever obtained a permit from the 1st respondent for the construction. The petitioners have not followed the law in this regard.

In the case of Dankotuwa Estate Co., Ltd vs The Tea Controller 42 NLR 197, Soertsz J stated as follows;

The leading case on this point is that of *Rex v. Electricity Commissioners* [1 (1924) 1 K. B. 171.] Atkin L.J., as he then was, discussing the writs of prohibition and certiorari said, "the operation of the writs has extended to control the proceedings of bodies which do not claim to be or would not be recognized as Courts of Justice. Whenever anybody of persons having legal authority to determine questions affecting the rights of subjects *and* having *the duty to act* judicially, act in excess of legal authority, they are subject to the controlling jurisdiction exercised by these writs". Slessor L.J. in adopting and analysing this dictum in *Rex v. The London County Council*¹ said "Atkin L.J. lays down four conditions under which a rule for *certiorari* may issue. He says: ' wherever anybody of persons (first) having legal authority, (secondly) to determine questions affecting the rights of subjects, (thirdly) having the duty to act judicially, (fourthly) act in excess of their legal authority, they are subject to the controlling jurisdiction exercised by these writs' ". Other very eminent Judges have expressed themselves in similar terms.

Admittedly the subject land is State Land. The petitioners have no permit or a grant for that State Land. The Magistrate of Anuradhapura has decided against the 1st petitioner in an action instituted by the 4th respondent to evict

the petitioner from that State Land. The petitioners have not obtained a permit from the Municipal Council of Anuradhapura to build on that land. The Petitioners have not shown that they have legal rights, which are affected by the decision of the respondents, to obtain the reliefs sought in this application. The respondents have not acted outside the law.

In view of the above circumstances, the decision of the first, second and third respondents is not outside the law or not *ultra-vires*, and they have not committed any error in law.

Anuradhapura Municipal Council has given a 17 perch State Land to the 8th respondent on a lease to build a house. The 8th respondent was recommended to be given State Land to build a house in 1993 during the *Gam Udawa* project in the Anuradhapura area. The petitioners now seek to quash a lease given to the 8th respondent in 1994. This inordinate delay was not explained at all by the petitioners. In any event the petitioners do not have a legal right to ask for the cancellation of these lease agreements.

The petitioners' application has no merit. The application of the petitioners is dismissed without costs.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.

