

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

CA/WRIT/456/2021

1. Karuppai Rajasekaran
No. 530/15, Negombo Road,
Wattala.
2. Anton Hemantha
No.530/14, Negombo Road,
Wattala.
3. Reuban Sebastian
No.530/17, Negombo Road,
Wattala.

PETITIONERS

Vs.

1. Rathnamali Rubasinghe
Senior Survey Superintendent,
Sri Lanka Survey Department,
District Survey Office, Gampaha.

2. P.H.M. Priyadarshani
Commissioner General,
Land Title Settlement Department,
No. 1200/6, Mihikatha Medura,
Rajamalwatta Road,
Battaramaulla.

- 2A. Chathurika Dissanayake
Assistant Commissioner,
Land Title Settlement Department,
Divisional Office,
No. 106, Yakkala Road,
Gampaha.

3. Mohommed Shaafi Mohammed
Zahireen
No. 820/06/B, Kanthi Road,
Hunupitiya.

4. Cassim Abdul Hameed Mohommed
Shaafie,
No. 820/06/B, Kanthi Road,
Hunupitiya.

5. Mohammed Shaafi Mohommed
Riyazdeen,
No. 820/06/B, Kanthi Road,
Hunupitiya.

6. Mohommed Shaafi Mohommed
Shammi,
No. 820/06/B, Kanthi Road,
Hunupitiya.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Ravindranath Dabare with Savanthi Ponnampereuma and Imalka Hansani for the Petitioners.

Avanthi Weerakoon, SC for the 1st, 2A and 7th Respondents.

Argued on : 27.03.2023, 10.07.2023

Decided on : 27.07.2023

Sobhitha Rajakaruna J.

The Petitioners seek a writ of certiorari to quash the validity of Cadastral Map No. 512000 Block No.2 Sheet No.1 (marked 'P3') and Cadastral Map No. 512000 Block No.2 Sheet No.8 (marked 'P4'). They also seek a writ of mandamus to compel the 2nd and 2A Respondents to correct the Cadastral Maps in dispute and to give effect to Survey Plan No. 3089 (marked 'P1').

When considering the submissions of the Petitioners in respect of the validity of the Cadastral Maps marked 'P3' and 'P4', it appears that there is a dispute in the boundaries to Survey Plan No. 3089 which predates the Cadastral Maps in question. The contention of the Petitioners, based on the letter marked 'P8', is that there is an apparent error in Cadastral Map marked 'P4'. The said letter 'P8' has been addressed to the Assistant Commissioner of Title Settlement, (Gampaha/ Ja Ela/ Wattala) by the Senior Superintendent of Surveys making a recommendation to the effect of cancelling the said Cadastral Map No. 512000 Block No.2 Sheet No.8 on the basis that a portion of the public road has been included into the subject land when issuing certificate No. 0023391. Further,

the said Senior Superintendent of Survey has stated that Lot 57 of Cadastral Map No. 512000 Block No.2 Sheet No.1 has been properly surveyed.

In considering the validity of the Cadastral Map marked 'P4', attention should be drawn to the letter dated 10.03.2016 (marked 'P9'), letter dated 18.03.2016 (marked 'P10') and letter dated 21.03.2016 (marked 'P11'). In comparing the Survey Plan marked 'P1' and the Cadastral map marked 'P4', it is the contention of the Petitioners and the 2nd and 2A Respondents that the Cadastral Map 'P4' contains a flaw, due to the incorporation of part of the roadway. In perusing 'P9' to 'P11' it could be seen that the Assistant Commissioner of the Land Title Settlement Department (Divisional Office- Gampaha) admits that there is an error in Cadastral Map marked 'P4'. By virtue of the letters marked 'P9' to 'P11' from the Assistant Commissioner of the Land Title Settlement Department (Divisional Office- Gampaha) to the 3rd Respondent, it is evident that the authorities are admitting the flaw in the said Cadastral Map marked 'P4'. By 'P11' the Assistant Commissioner of Land Title Settlement has taken measures to notify the 3rd Respondent to return the disputed certificate, for the purpose of correction. It is noted that the 3rd Respondent has already collected the said disputed certificate (No. 0023391), which stipulates the incorrect boundaries and that the 3rd Respondent is holding the purported, irregular certificate as at the date of hearing of the instant Application.

Having perused the letters marked 'P9' to 'P11', it could be contended that there remains an error in relation to the Cadastral Map marked 'P4', which has been admitted by the Land Title Settlement Department. Furthermore, by letter dated 03.05.2023 marked 'X' addressed to the Hon. Attorney General (tendered to Court on 10.07.2023), the Land Title Settlement Department admits the flaw in the Cadastral Map marked 'P4'. It further states that they have requested the 3rd Respondent to return the erroneous certificate No. 0023391 for the purpose of effecting these corrections but it has not been returned by the said 3rd Respondent. Based on the letter marked 'X' it is observed that the Land Title Settlement Department expects to rectify the said error by way of an order of court.

Now I must advert to the reliefs sought by the Petitioners in the prayer of the Petition of the Petitioners. The primary reliefs sought by the Petitioners is to issue a writ of certiorari to quash the validity of the Cadastral Maps marked 'P3' and 'P4'. Further, the Petitioners are seeking a writ of mandamus directing the 2nd and 2A Respondents to correct the

Cadastral Map marked 'P3' and register an amended Cadastral Map under the Registration of Title Act No.21 of 1998.

It should be noted that the Registrar of the Court of Appeal, via registered post has attempted to serve notice on the 3rd, 4th, 5th and 6th Respondents, on three occasions. As it appears on the returned envelopes the said Respondents have refused to accept the letters on three occasions i.e., 21.12.2021, 22.12.2021 and 23.12.2021. Moreover, the Petitioners referring to the motion dated 19.07.2022 submitted to Court that the Petitioners would proceed only against the 1st, 2A and 7th Respondents who are represented by the Attorney General.

What needs consideration at this stage by this Court is to examine whether it is appropriate to quash the validity of the Cadastral Maps marked 'P3' and 'P4' as prayed for by the Petitioners merely based on the assertions of the Land Title Settlement Department, which expressly state that there is an error in 'P4'.

In view of the provisions of the Registration of Title Act No. 21 of 1998, the Commissioner of Title Settlement after due investigation is empowered to declare any claimant eligible to be registered with an appropriate class title of ownership. By virtue of Section 22 of the said Act any claimant aggrieved by any Declaration of the Commissioner of Title Settlement under Section 14 may prefer an appeal against such declaration within the prescribed period to the District Court having jurisdiction over the area where the land parcel is situated. This court is mindful that no party has made any application to the District Court, under the provisions of the said Section.

Similarly, a question arises whether the Commissioner of Title Settlement has exceeded his powers or has issued a certificate against the law. It is unique in the instant Application that the Registrar of Title himself informs Court through the Attorney General that certificate No. 0023391 has been issued upon erroneous facts, which has surfaced at a subsequent stage. As mentioned above the Senior Superintendent of Survey by the letter marked 'P8' recommends the Assistant Commissioner of Land Title Settlement to cancel Cadastral Map No. 512000 Block No.2 Sheet No.8.

The 1st, 2nd and 2A Respondents as mentioned above have submitted, that the 3rd Respondent, in whose custody the disputed certificate is, has refused to adhere to the request made by the Land Title Settlement Department to return the said certificate.

Furthermore, the Petitioners have sent Letters of demand marked 'P12(e)' to 'P12(h)' to the 5th, 6th, 4th and 3rd Respondents respectively.

This Court is mindful of the appeal process in Section 22 of the said Registration of Title Act. It appears that there aren't sufficient provisions in the Registration of Title Act No. 21 of 1998, for the Commissioner General of Title Settlement to deal with a situation as in the instant Application adequately and efficaciously. In such a situation, if this Court does not exercise its inherent powers, it would imply that Court is sanctioning an error to be continued in respect of a decision made by a public authority.

In this regard, the conduct of the 3rd Respondent should also be taken in to consideration as he has not accepted the notices issued by this court and has failed to adhere to the request made by the Assistant Commissioner of Land Title Settlement to return the disputed certificate. In the circumstances, I take the view that this Court should consider the reliefs prayed for by the Petitioners to a limited extent. I am of the view that the expressed admission of the error committed by the Commissioner of Land Title Settlement ('P9' to 'P11') together with the letter marked 'X' and also the recommendations made by Senior Superintendent of Survey to the Assistant Commissioner of Land Title Settlement by 'P8' should be taken into consideration when arriving at the final conclusion in the instant Application.

Bearing in mind the said admission of error by the Land Title Settlement Department and the recommendations by the Surveyor Generals Department on a careful consideration of the whole matter, I have come to the conclusion that by reason of the special circumstances of this case, I should exercise my discretion to issue a writ of certiorari to quash the validity Cadastral Map No. 512000 Block No.2 Sheet No.8 and Cadastral Map No. 512000 Block No.2 Sheet No.1.

At this stage I must draw my attention to the *MacFoy* Theory (*MacFoy vs. United Africa Co. Ltd. (1961) 3 A.E.R. 1169*) which has been applied in the Sri Lankan case of *Rajakulendran vs. Wijesundera (Sriskantha Vol.1 Part 1 1982 page 164)*. In light of this, I make an observation that the certificate No. 0023391 has no validity in law once the Cadastral Maps marked 'P3' and 'P4' are quashed by this court.

In addition, I should exercise my discretion to issue a writ of mandamus with appropriate variation to the scope of the mandamus sought by the Petitioners. Hence, I proceed to issue a writ of mandamus directing the 2nd and 2A Respondents to conduct a fresh inquiry under the provisions of the said Act in order to issue a fresh title certificate to the appropriate owners in respect of the said land.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal