

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

1. Badurdeen Mohammed Rasheed.  
Muslim Village,  
Buttala.

**PETITIONER**

**C.A. Case No. WRT-0422-19**    **Vs**

1. R. M. R. S. Thilakarathne,  
Divisional Secretary.  
Divisional Secretariat office,  
Buttala.
2. L. P. C. Subodini.  
Deputy Land Commissioner for Ampara  
And Monaragala District,  
Land Commission: General Department,  
No. 1200/6, Rajamalwatte Road,  
Battaramulla.

2(a). D. D. S.T. Gunarathne

Deputy Land Commissioner for Ampara and  
Monaragala District,  
Land Commission: General Department,  
No: 1200/6, Rajamlwatte Road,  
Battaramulla.

3. Mr. Gayantha Karunathilaka.

The Minister,  
Ministry of Land and Parliament Reform,  
“Mihikatha Medura”, Land Secretariat,  
No.1200/6, Rajamalwatte Road,  
Battaramulla.

3(a). Mr. S. M. Chandrasena.

The Minister,  
Ministry of Land and Parliament Reform,  
“Mihikatha Medura”, Land Secretariat,  
No. 1200/6, Rajamalwatte Road,  
Battaramulla.

4. Mr. W. H. Karunarathne.

The Secretary,  
Ministry of Land and Parliament Reform  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6, Rajamalwatte Road,  
Battaramulla.

4(a). Mr. R. A. A. K. Ranawake.

The Secretary,  
Ministry of Land and Parliament Reform

“Mihikatha Medura”, Land Secretariat,  
No. 1200/6, Rajamalwatte Road,  
Battaramulla.

5. Herath Mudiyansele Lalani Piyasena.  
100 Acres,  
Mahagoddayaya,  
Buttala

6. R. D. Sarath Kumara.  
No.104, Hadapangala,  
Weheragala Yaya,  
Wellawaya.

7. S. A. Shiran Charu Vimukthi.  
22, Aluth watta,  
Digana.

8. Jagath Darmasekara.  
Attorney-at-Law and Notary Public  
490, Lawyers Office Complex,  
William Gopallawa Mawatha,  
Kandy.

9. Hon. Attorney General.  
Attorney General’s Department,  
Hulftsdorp,  
Colombo 12.

**RESPONDENTS**

**BEFORE : M. SAMPATH K. B. WIJERATNE, J**

**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** Lakshan Dias with Kasuni Herath for the Petitioner.  
Harith De Mel with Vinitha Lekamge for the 5<sup>th</sup>  
Respondent instructed by Piyumi Kumari.  
Suranga Wimalasena, DSG with Avanthi Weerakoon,  
SC for the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> Respondents.

**DECIDED ON:** 10.08.2023

**ORDER ON PRLIMINAY OBJECTION**

**WICKUM A. KALUARACHCHI, J.**

In this application, the petitioner sought a Writ of Certiorari to quash the grant/permit bearing number 386223 issued to the 5<sup>th</sup> respondent by the 1<sup>st</sup> respondent. Also, the petitioner sought a Writ of Mandamus to the 1<sup>st</sup> to 4<sup>th</sup> respondents to conduct a fair prior investigation and issue a grant/permit to the petitioner for the land subject to this application.

The original petition was filed on 26<sup>th</sup> September 2019, and the amended petition was filed on 18<sup>th</sup> February 2020. The 1<sup>st</sup> to 4<sup>th</sup>, and 9<sup>th</sup> respondents have filed their statement of objections. The 5<sup>th</sup> respondent has filed a separate statement of objections. Subsequently, the counter affidavit was filed by the petitioner. At the hearing of the application, the learned Deputy Solicitor General for the 1<sup>st</sup> to 4<sup>th</sup>, and the 9<sup>th</sup> respondents raised a preliminary objection. Parties were allowed to tender written submissions on the preliminary objection. Accordingly, written submissions were filed on behalf of the petitioner, the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> respondents and the 5<sup>th</sup> respondent. The 5<sup>th</sup>

respondent is also asking to dismiss the application *in limine* on the preliminary objection raised by the learned Deputy Solicitor General.

The preliminary objection is that the petitioner does not have *locus standi* to have and maintain this application. The said preliminary objection is based on following two grounds.

- I. The parties who transferred the State Land to the petitioner did not have title to transfer the same and therefore, the petitioner cannot claim from the State, since the State has not created any legitimate expectation to the petitioner.
- II. Without prejudice to that position, in terms of the Land Development Ordinance (hereinafter referred to as the “LDO”, all the transactions that the petitioner relied upon are null and void by the operation of the law.

Briefly, the facts of the case are as follows:

The land subject to this application belongs to 5<sup>th</sup> and 6<sup>th</sup> respondents, Herath Mudiyansele Lalani Piyasena and Rajapakse Devage Sarath Kumara, husband and wife. The petitioner stated in his petition that they had been in physical possession of the land for a long time and they did not have any permit issued by the government. They have transferred the land to one Samarakkodi Arachchige Shiran Charu Wimukthi (7<sup>th</sup> respondent) for Rs.1,500,000/- under improper circumstances, according to the petition. With the adjoining land, the 7<sup>th</sup> respondent transferred the land in question to the petitioner for a sum of Rs. 4,500,000/- by executing a transfer agreement, according to the petitioner. Subsequently, some dispute arose in respect of this land and a case under Section 66 of the Primary Court Procedure Act was filed in the Magistrate Court of Wellawaya. The petitioner stated that on the directions of the learned Magistrate of Wellawaya, the Divisional Secretary issued a permit bearing number 386223 dated 24<sup>th</sup> July 2018 to Lalani Piyasena, the 5<sup>th</sup> respondent. Now, the petitioner

seeks, by this application, to quash the said permit and to issue a permit in his name.

According to the aforesaid averments of the petition, at the time of the land being transferred to the petitioner, the land belonged to the State. It is stated in the petition that transfer took place on 04<sup>th</sup> January 2018 and the permit was issued to the 5<sup>th</sup> respondent on 24<sup>th</sup> July 2018. (According to the permit bearing number 386223, marked P-10, the date on which the permit was issued is 2018.2.24.) Even in an occasion where a permit has been issued to a person under the Land Development Ordinance in respect of state land, the land still belongs to the state. In the event of failure to comply with any of the conditions contained in the permit, the permit could be cancelled. However, even on the date, the transfer agreement was executed in order to transfer the land to the petitioner, a permit had not been issued for this land to anybody. Hence, undisputedly, the subject matter of this application is a state land.

In the written submission tendered by the petitioner for the preliminary objection, it is stated that the petitioner possessed and cultivated the land without any disturbance since 4<sup>th</sup> January 2018 and in or about February 2019, the 5<sup>th</sup> respondent forcibly entered the land and built a house with clay. The petitioner's response to the preliminary objection was that the 5<sup>th</sup> respondent did not come forward for a long time to claim her right and 5<sup>th</sup> and 6<sup>th</sup> respondents have sold this property to the 7<sup>th</sup> respondent some time ago. Therefore, the petitioner states in the conclusion of his written submission that the 1<sup>st</sup> to 4<sup>th</sup> respondents have neglected their authority by issuing a permit for the sold government land.

Before considering the other matters, it is to be noted that the government has not sold this land to anybody. Hence, this is not a "sold government land". Nobody else can sell state land except the state. In addition, for state land, the Divisional Secretary can issue a permit to

a suitable person according to the law. Therefore, the aforesaid contention that the 1<sup>st</sup> to 4<sup>th</sup> respondents have neglected their authority by issuing a permit for the sold government land has no merit.

Section 161 of the Land Development Ordinance states that “No person shall, by possession of any land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State”. So, even a permit holder cannot get a prescriptive title to a state land by possessing the land for a long period of time.

Section 162 of the land Development Ordinance as amended by Act No.16 of 1969 reads as follows:

162(1) A notary shall not attest any instrument operating as a disposition of a holding which contravenes the provisions of this Ordinance.

162(2) An instrument executed or attested in contravention of the provisions of this section shall be null and void.”.

Although, a transfer agreement, P-6 has been executed by Mr. M.K.M Farouk, Attorney-at-Law and Notary Public to transfer the state land to the petitioner on a consideration, the notary is not entitled by law to execute this transfer agreement for the land owned by the state. The 5<sup>th</sup> respondent, Lalani Piyasena or the 7<sup>th</sup> respondent, Shiran Charu, both of whom could not acquire prescriptive title to this state land and could not execute any instrument to transfer the land owned by the state. Therefore, the 7<sup>th</sup> respondent does not get any title to the land in question, although the notary has stated in the transfer agreement that the vendor (the 7<sup>th</sup> respondent) obtained ownership by possessing the land more than ten years. The notary who executed the transfer agreement should know that ownership could not be claimed for a state land on prescription.

The transfer agreement P-6 is an instrument operating as a disposition of the property in question. Therefore, the transfer agreement executed by the notary on the basis that the 7<sup>th</sup> respondent acquired title to the state land by long term possession is null and void according to Section 162(2) of the LDO. In terms of Section 163 of the LDO, a notary who knowingly attests any deed in breach of the provisions of Section 162 shall be guilty of an offence.

Now, the issue is whether the petitioner, who has no title or right whatsoever to this land, has the *locus standi* to maintain this application. In our country, the law has developed to the extent that if any kind of legal right or interest is affected by administrative action, that person can seek redress by way of an application of writ. In the case of ***Fernando, The Conservator of Forests and two others v. Timberlake International Pvt Ltd and another*** – (2010) 1 Sri L.R. 326 at pages 352, 353, it was observed that “Sri Lankan courts have shown an increasing willingness to open out their jurisdiction to whoever whose interests are affected by administrative action,...”.

In the case at hand, the petitioner cannot have any interest in the land in question because it is state-owned property and the petitioner does not have any legal right to the property. Any person whose interests are affected by administrative action has *locus standi* to maintain a writ application. The aforementioned "interests" do not mean an interest arising from activities done contrary to the law. As the petitioner stated, in this application, he has given consideration to the 7<sup>th</sup> respondent to obtain the ownership of a state land to which the 7<sup>th</sup> respondent has no title or right whatsoever. Then, the petitioner is asking to issue a writ of mandamus to the 1<sup>st</sup> to 4<sup>th</sup> respondents to issue a permit to the state land in his name. The petitioner has done a purposeless transaction with the 7<sup>th</sup> respondent, and precisely, his interests have not been affected by any administrative action.

The case of ***Samarakoon and Others V. University Grants Commission and Others*** – (2005) 1 Sri L.R. 119 explains how "legitimate expectation" derives. It was held that "Legitimate expectation derives from an undertaking given by someone in authority, and such an undertaking may not even be expressed and would have to be known from the surrounding circumstances." In the case at hand, the petitioner could not have legitimate expectations because the petitioner had no transaction or connection in respect of this land with the 1<sup>st</sup> respondent, divisional secretary, or any other official engaged in issuing permits, and he had transactions only with the 7<sup>th</sup> respondent, who had no right to the state land.

In, ***Union of India v Hindustan Development Corporation***- (1993) SCC (3) 499 it was stated that, the legitimacy of an expectation can be inferred, if it is founded on the sanction of law or custom or an established procedure followed in a natural and regular sequence. In the case at hand, no sanction of law, custom or an established procedure was followed by the petitioner. They have engaged in personal transactions on a property owned by the state.

According to the petition, without a permit under Land Development Ordinance or without any legal right, 5<sup>th</sup> and 6<sup>th</sup> respondents have possessed the land and illegally transferred the state land for a sum of Rs.1,500,000/- to the 7<sup>th</sup> respondent. Again, the 7<sup>th</sup> respondent made an illegal transaction with the petitioner and executed the transfer agreement, P-6 to transfer the state land to the petitioner. It is to be noted that violators of law are not entitled to legitimate expectation as observed in the case of ***Cinnamond v. British Airports Authority*** – [1980] 1 W.L.R. 582. This decision has also been followed by the Indian Supreme Court in ***Madras City Wine Merchants' Association. and Another v. State of Tamil Nadu and Another*** – Case No: Appeal (civil) 4981 of 1994, decided on 27 July, 1994.

In this application, the petitioner sought to quash the permit given to the 5<sup>th</sup> respondent and to issue the permit for the land to the petitioner. As stated above, the petitioner has no legal right or interest whatsoever in the land in question, and thus he has no *locus standi* in asking to issue a permit in his name. In addition, as the petitioner has no *locus standi* to maintain this case for the reasons stated above, the petitioner cannot challenge the permit granted to the 5<sup>th</sup> respondent by the 1<sup>st</sup> respondent.

For the foregoing reasons, I hold that the petitioner has no *locus standi* to maintain this application. The preliminary objection is upheld. The application for Writs of Certiorari and Mandamus is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

M. Sampath K. B. Wijeratne J.

I agree.

**JUDGE OF THE COURT OF APPEAL**