

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Application for the mandates in the nature of Writs of Certiorari, Mandamus and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application No. 199/2021

D.J. Dayananda
297/24 and also 297/8,
Getamanne Gedara,
17, Pannagamuwa, Weerawila,
Thissamaharama.

Petitioner

Vs

1. D.L.K. Priyawansa
Divisional Secretary
Divisional Secretariat
Thissamaharama.

2. W.H. Karunaratne
District Secretary

District Secretariat
1st Floor, Magam Ruhunupura
Administrative Complex,
Siribopura,
Hambantota.

3. T.G.S. Kumara

Southern Provincial Deputy Land
Commissioner,
Southern Provincial Deputy Land
Commissioner's Office,
2nd Floor, Magam Ruhunapura
Administrative Complex,
Siribopura,
Hambantota.

4. G.D.K. Gamage
Commissioner General Land
Department of the Land
Commissioner General

5. Hon. S.M. Chandrasena
Minister of Lands,
Ministry of Lands and Land
Development.

6. R.A.A.K. Ranawaka
Secretary,
Ministry of Lands and Land
Development.

All at-
"Mihikatha Medura"
Land Secretariat,
1200/6, Rajamalwatta Road,
Battaramulla.

7. Viritha Mullagamage
Chandraseeli
331, Sahal Sankeerna Road,
Halabana,
Pannagamuwa, Weerawila.

8. Hon. Attorney General
Attorney General's Department.
Colombo 12.

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Ms. Inoka N. Weekkody for the Petitioner

Supported on: 24.05.2023

Order delivered on: 29.08.2023

S.U.B. Karalliyadde, J.

This Order pertains to the issuance of notices of this Writ Application on the Respondents. The facts of the case are briefly as follows;

In terms of section 19 (4) of the Land Development Ordinance, No. 19 of 1935 (as amended) (the Ordinance) a Grant (P1) had been issued to the subject matter of this action which is State land to the Petitioner's father's elder brother, Dingi Appu Karunaratne. The Petitioner claims that he is entitled to be issued a State Grant to that land which is in the extent of 01 Acre or a part thereof in the extent of 02 Roods and 36.2 Perches shown as Lot B in the Tracing No. H/LC/TISS2017/53 prepared by the Surveyor General (P-44). The land is situated in the Thissamaharama Divisional Secretariat area in the Hambantota District. Upon the death of Dingi Appu Karunaratne on 20.10.2009, his spouse, Kusumalatha Abeywickrama succeeded to the land mentioned in the Grant marked as P1 in terms of sections 49 and 72 of the Ordinance (P-4). After the demise of Digi Appu Karunaratne the Petitioner assisted Kusumalatha Abeywickrama to cultivate the land. Kusumalatha Abeywickrama died on 18.06.2011. Since Dingi Appu Karunaratne and Kusumalatha Abeywickrama had no children, upon her death the Petitioner continued to possess and cultivate the land mentioned in P1. Dingi Appu Karunaratne had four brothers namely, Martin Karunaratne, Ariyasena

Karunaratne, Danny Karunaratne and Don Julius Karunaratne. Don Julius Karunaratne is the father of the Petitioner. After the death of Kusumalatha Abeywickrama, disputes arose over the land and the Petitioner repeatedly made requests from the State authorities to issue a Permit to him for the land mentioned in P1 but his attempts failed. Meanwhile, the Divisional Secretary of Thissamaharama (the 1st Respondent) decided that Sirisena Karunaratne who is the brother of the Petitioner is the successor of the original Grantee, Dingi Appu to the land mentioned in P1 in terms of sections 49 and 72 of the Ordinance on the basis that he is the son of Dingi Appu (P-12) and issued a Grant bearing No. 52277 in favour of Sirisena Karunaratne. However, as it was revealed later that Sirisena Karunaratne had obtained the Grant for the land falsifying and misrepresenting his identity as the son of Dingi Appu, steps were taken by the 1st Respondent to cancel the Grant in the name of Sirisena Karunaratne. The cancellation of the Grant was registered on 02.09.2015 (P-27) in the Land Ledger. Thereafter series of inquiries were held by the 1st Respondent about the dispute to the land and consequently, hereinbefore mentioned Surveyor General's Tracing Bearing No. H/LC/TISS2017/53 marked as P44 was prepared dividing the land into two lots according to the possession of the land as Lots A and B. It is mentioned in the letter issued by the 1st Respondent marked as P-53 that Sirisena Karunaratne possesses Lot A in P44 in the extent of 1 Rood 03.80 Perches and the Petitioner possesses Lot B in the extent of 2 Roods and 36.20 Perches. Thereafter since the 1st Respondent could not find successor/ successors of the original Grantee Dingi Appu to the land mentioned in P1, the 1st Respondent took steps to cancel P1 in favour of Dingi Appu and the subsequent Grant in favour of Sirisena Karunaratne in terms of section 104 of the Ordinance and registered the cancellations in the Land Ledger (P-57). On 25.07.2019, even though the Petitioner was informed by the 1st Respondent that he would be considered to issue a Permit to the land at the next Land Kachcheri (P-60), no steps have been taken to issue a Permit to the Petitioner up to the date of the institution of this action. Meanwhile, the Petitioner obtained a loan on 26.08.2020 from the 7th Respondent by mortgaging lot B mentioned in P44 more fully described in Schedule II in the Petition on a document marked as P-61. Thereafter the 7th Respondent started to possess and develop the land. She applied for the water and electricity connections as well. Then the Petitioner sought intervention of the State authorities to dispossess the 7th Respondent from the land and to be issued a Permit in his favour. However, the authorities informed the Petitioner that intervention is not possible since the 7th Respondent developed the land and the

issuance of a Permit would be based on the current possession of the land (P-65, P-70, P-75, P-77, P-79). The Petitioner argues that in terms of the Ordinance, one or more Respondents have a public legal duty to issue a Permit to the Petitioner for Lot B in P44 which is more fully described in the II Schedule to the Petition and if one or more Respondents take a decision to issue a Permit for that land in favour of the 7th Respondent without taking into consideration the long period of possession of the Petitioner it is unreasonable, unlawful and irrational. The Petitioner further argues that the failure and/or omission on the part of 1st- 6th Respondents to issue a Permit to the Petitioner is tainted with irregularity, unlawfulness, unreasonableness and *ultra vires*.

The substantive reliefs sought by the Petitioner in this Writ Application are, *inter-alia*,

- c) Issue a mandate in the nature of Writ of Certiorari quashing any purported decision of the 1st - 6th Respondents to issue a Permit to the 7th Respondent in respect of the land described in Schedule II.
- d) Issue a mandate in the nature of Writ of Certiorari quashing any purported decision of the 1st- 6th Respondents to include the 7th Respondent as a person selected to receive a Permit in respect of the land described in Schedule II.
- e) Issue a mandate in the nature of Writ of Prohibition preventing any one or more of the 1st – 6th Respondents from giving effect to any purported decision and/or determination and/or future decision and/or determination to issue a Permit to the 7th Respondent in respect of the said land described in Schedule II.
- f) Issue a mandate in the nature of Writ of Mandamus compelling any one or more of the 1st - 6th Respondents to cancel any Permit already granted to the 7th Respondent in respect of the said land described in Schedule II.
- g) Issue a mandate in the nature of Writ of Mandamus compelling any one or more of the 1st – 6th Respondents to issue a Permit to the Petitioner in respect of the land described in Schedule II.

Or in the alternative to prayer (g);

- h) Issue a mandate in the nature of a Writ of Mandamus compelling any one or more of the 1st – 6th Respondents to issue a Permit to the most suitable person in terms of the law in respect of the land described in Schedule II.

There is no evidence before this Court that one or more Respondents are above to take a decision or already taken a decision to issue a Permit to the 7th Respondent or going

to include or already included the 7th Respondent as a person selected to receive a Permit in respect of the land in dispute.

*Wade and Forsyth in the book Administrative Law*¹, describe that,

“a Writ of Certiorari is issued by the Court to quash an order passed by an inferior court, tribunal, or quasi-judicial authority, whenever the authority has acted in excess of its power, or without requisite jurisdiction, or has violated the principles of natural justice... A quashing order is issued to quash a decision which is ultra vires whereas a prohibiting order is issued to forbid some act or decision which would be ultra vires.”

In *Central Queensland Services Pty LTD v Construction, Forestry, Mining and Energy Union*² case, it was held that Certiorari lies only to quash a "determinative" decision and cited *Ainsworth v Criminal Justice Commission*³, where it was held that,

‘Certiorari would not lie to quash a Commission report because the report had no legal effect upon an executive power over the applicant: his legal position was not changed by the report, nor did the report or its findings operate as a legal precondition to further administrative actions against him. Certiorari will not be issued where the decision maker was only hearing arguments and responding to the questions without making orders binding on the parties’.

The Petitioner in the instant action seek a Writ of Mandamus compelling the 1st to 6th Respondents to issue a Permit to the Petitioner or the most suitable person for the land in dispute. The discretion of selecting the suitable persons to alienate State lands and issuance of Permits to the State lands are vested with the Respondents in terms of the Ordinance and this Court has no powers to direct the Respondents in respect of issuing Permits for the State lands. It could intervene by exercising its writ jurisdiction if the decision of the Respondents in alienating the State lands is illegal, tainted with irregularity, unlawfulness, and unreasonableness, against the principles of natural justice and ultra vires *ultra vires*. Nevertheless, as stated before there is no material before Court that the Respondents are going to take or have taken a decision to alienate

¹ Wade HWR & Forsyth CF, *Administrative Law*, 11th Edition, Oxford University Press, Pg 509-512.

² QUD 146 of 2016

³ (1992) 175 CLR 564 at 581 and 595

the subject land of this action to anybody or included or intending to include the 7th Respondent's name as a person selected to receive a Permit.

Under such circumstances, I hold that the Petitioner is not entitled to the reliefs sought in the Petition and further that this Application is premature. The Court, therefore, refuse to issue notices of this Writ Application on the Respondents. Application dismissed. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL