

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

An Application under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka for Writs of  
Certiorari, Prohibition and Mandamus.

Weerasekara Kankanam Arachchige  
Roshan Indika.  
Kiripattiya, Pallemalala,  
Hambantota.

**PETITIONER**

**C.A. Case No. WRT-0421/20**

**Vs**

1. D. D. K. Gamage,  
Commissioner of Lands,  
Mihikatha Madura,  
1200/6,  
Rajmalwatta Road,  
Battaramulla.
2. T. G. Sarath Kumara,  
Southern Provincial Land Commissioner,  
Magampura, Administrative Complex,  
Siribopura, Hambantota.
3. Kaushalya Galappathi.  
Divisional Secretary,  
Hambantota, Magampura,  
Administrative Complex,  
Siribopura, Hambantota.

4. K. A. D. Sepali.  
Assistant Divisional Secretary,  
Magampura,  
Administrative Complex,  
Siribopura, Hambantota.

5. K. P. Saranga.  
Grama Niladhari,  
No. 83,  
Hambantota.

**RESPONDENTS**

**BEFORE :** **M. T. MOHAMMED LAFFAR, J**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** D. Weerasuriya, PC, with H. K. Passan Malinda for the  
Petitioner.  
Y. Fernando, DSG, for the 1<sup>st</sup> – 4<sup>th</sup> Respondents.

**ARGUED ON :** 07.09.2023

**DECIDED ON:** 11.10.2023

**WICKUM A. KALUARACHCHI, J.**

The petitioner has filed this application seeking a Writ of Certiorari to quash the document marked P-15, wherein it is stated that the permit issued under the Land Development Ordinance (hereinafter sometimes referred to as the “Ordinance”) to the petitioner is invalid. In the alternative, the petitioner seeks a Writ of Mandamus directing the respondents to issue a fresh permit to the petitioner in respect of the land described in the petition. In addition, the petitioner sought a Writ of

Prohibition to prohibit the respondents from taking any further steps on the decision mentioned in P-15 and the notice marked P-18.

The 2<sup>nd</sup> respondent has informed the petitioner by the said letter dated 20.02.2020, marked P-15 that the permit dated 21.07.1994, bearing No. ୩୯/୧୨୯୯/83/804 issued to the petitioner is not a valid permit because a permit under the Land Development Ordinance cannot be issued to a person under the age of 18 years and the petitioner was 16 years 1 month and 19 days of age at the time of issuing the said permit.

According to the petitioner, his father, mother, his younger brother and the petitioner occupied/lived on the land in issue from his childhood. When the petitioner reached the age of understanding of matters, he came to know that the said land they occupied was owned by the state and his father did not have a permit or any authority to occupy the land. However, they continued to live and cultivate the land. During this period, part of their house which was built with clay and with a Cajun roof caught fire and the petitioner believes that it was set on fire by certain persons with the idea of chasing them away from the land. The petitioner repaired the partially burnt-down house and continued to cultivate and live there. Then, the petitioner wanted to build a permanent building in the land in issue. He requested permission from the relevant Divisional Secretary through the Grama Niladari of the area to construct a house and to carry on a business in the said premise. The petitioner stated that the Pradeshiya Sabha approved a building plan for the land in issue and the said approved plan has been marked and submitted as P-4 with the petition. According to the petitioner, he was not aware of the permit issued in his name, so he attempted to regularize his occupation by obtaining a permit, and then only he came to know that a permit had already been issued to him. The petitioner has explained in his petition the chain of events that took place. Subsequently, he has received the aforesaid letter

P-15 indicating that the permit issued to him is invalid. Accordingly, the petitioner has filed this application seeking the aforesaid reliefs.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents filed their statement of objections together and stated that one of the key criteria in issuing a permit is that the permit holder should be over 18 years of age at the time of issuance of the permit, and the petitioner does not qualify to hold a permit under the Land Development Ordinance as the petitioner had not reached the age of 18 years at the time the permit was issued to him. Certain points have been mentioned in the statement of objections, and it was claimed that the petitioner has not come before this court with clean hands. Stating further in the statement of objections that the petitioner has failed to demonstrate any cognizable legal basis to invoke the writ jurisdiction of this court, the respondent sought to dismiss the petitioner's application.

The petitioner has filed the counter affidavit with the document marked P-21. At the hearing, the Learned President's Counsel for the petitioner and the Learned Deputy Solicitor General for the 1<sup>st</sup> to 4<sup>th</sup> respondents made oral submissions.

The Learned President's Counsel for the Petitioner contended that the petitioner with their parents occupied the land in question for a long time and the petitioner cultivated and developed the land. He contended further that without knowing that a permit had been issued in his name, the petitioner attempted to obtain a permit to this land. The Learned President's Counsel pointed out that the building plan was approved, water supply and electricity were given and thus, the petitioner is entitled for a permit. The Learned President's Counsel emphasized the fact that the Commissioner General of Lands has directed to issue a permit to the petitioner by the letter marked P-21 dated 16.08.2021 and according to

the Section 4(2) of the Land Development Ordinance, the Divisional Secretary has to give effect to the direction given in P-21 by the Commissioner General of Lands but he failed to do so. Accordingly, the Learned President's Counsel urged to issue a Writ of Mandamus compelling to issue a permit to the petitioner in respect of the land in question.

The learned Deputy Solicitor General appeared on behalf of the 1<sup>st</sup> to 4<sup>th</sup> respondents contended that according to Section 76 of the Land Development Ordinance, a permit cannot be issued to a person under age of 18 years, as such, the permit issued to the petitioner is *void ab initio* for the reasons set out in P-15.

Dealing with the direction given by the Commissioner General of Lands in P-21, the learned Deputy Solicitor General submitted that under the Land Development Ordinance, the occupation of state land by unauthorized occupants could be regulated but the petitioner at present is in unauthorized possession of the state land in question. While appearing for the 1<sup>st</sup> respondent, the Commissioner General of Lands, the Learned Deputy Solicitor General further submitted that the procedure to obtain a permit through Land Kachcheri is clearly laid out in the Ordinance and P-21 has been issued by the 1<sup>st</sup> respondent without following the said procedure. Since the initial permit was void, she argued that the petitioner has to be considered in the same position as any other unauthorized occupant of the state land. She contended further that the petitioner should follow the regular land kachcheri procedure as every other person, and that by failing to do so, the petitioner is trying to circumvent that procedure by obtaining P-21 from the Commissioner General of Lands, which is unreasonable. The learned DSG contended further that the

petitioner has contrived with the officer holding the office of Commissioner General of Lands to obtain P-21.

Answering the question posed by the Court about why the Divisional Secretary did not respond to the letter P-21 or comply with the direction given by the Commissioner General of Lands in P-21, the learned Deputy Solicitor General submitted that proceedings were instituted against the petitioner in terms of State Lands (Recovery of Possession) Act in the Magistrate Court and a quit notice was issued on 06.10.2020. In reply, the learned President's Counsel for the petitioner contended that instituting Magistrate Court proceedings and not taking steps on P-21 clearly show malice on the part of the 3<sup>rd</sup> respondent (Divisional Secretary). He submitted that the Divisional Secretary must give effect to P-21.

Section 4 of the Land Development Ordinance reads as follows;

*4(1) The Commissioner-General of Lands may from time to time give general or special directions to a Government Agent or to a land officer as to the performance of his duties relating to land administration and may direct or authorize any question of doubt or difficulty in connection with such duties to be referred to the Commissioner-General of Lands for decision.*

*(2) Any direction or decision of the Commissioner-General of Lands shall be observed and given effect to by the Government Agent or by the land officer as the case may be.*

According to the above section, it is apparent that the Commissioner General of Lands has the authority to give directions to the Government Agent or to the Land Officers and any direction or decision of the

Commissioner General of Lands shall be given effect to by the Government Agent or the Land Officer as the case may be. The letter P-21 sent by the Commissioner General of Lands to the Divisional Secretary of Hambantota contains Commissioner General's decision and his direction to issue a lawful document for the extent of land that the petitioner possesses. In addition, the Commissioner General has informed the Divisional Secretary to let him know if there is a special reason to get back possession of the land to the state ejecting the petitioner from the portion of land that he possesses.

Admittedly, P-21 was not replied. As requested by the Commissioner General in P-21, the Divisional Secretary or any other government official has not informed the Commissioner General any special reason to take back the possession of the land in question to the state. Accordingly, the Divisional Secretary neither replied to P-21 nor complied with the direction given by P-21.

The Learned Deputy Solicitor General contended that the Divisional Secretary has instituted proceedings in the Magistrate Court against the petitioner to eject him. It is to be noted that P-21 has been issued after the said Magistrate Court proceedings were instituted. In view of Section 4(2) of the Land Development Ordinance, the Divisional Secretary has no authority to disregard the direction given by the Commissioner General in P-21. So, the Divisional Secretary cannot proceed with the Magistrate Court action to eject the petitioner from the portion of land in question when the Commissioner General directed to grant a lawful document enabling the petitioner to possess the portion of land in question.

At least the 3<sup>rd</sup> respondent, the Divisional Secretary, did not inform the 1<sup>st</sup> respondent, the Commissioner General, of any special reason to get back

possession of the land to the state ejecting the petitioner when the Commissioner General had asked to inform him if there was any such special reason. The learned Deputy Solicitor General who appeared for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents admitted that the Divisional Secretary did not inform them of any such special reason and that no reply was sent to P-21. Even if there was a special reason to get back the possession to the state, unless the Commissioner General revoked his previous direction to give the possession to the petitioner and directed him to get back the possession to the state, the Divisional Secretary had no authority to proceed with the Magistrate Court action to eject the petitioner. The Commissioner General's decision and direction contained in P-21 have not been revoked by him or by any other government official who had the power to do so.

While appearing for the 1<sup>st</sup> respondent, the Commissioner General of Lands, the learned Deputy Solicitor General contended that P-21 has been issued by the 1<sup>st</sup> respondent without following the procedure laid down in the Land Development Ordinance. However, the learned DSG did not point out any provision of the Ordinance that was not followed by the Commissioner General in issuing P-21. In fact, no such provision could be found in the ordinance, which the Commissioner General has not followed in taking the decision contained in P-21. In addition, if the Commissioner General has taken that decision not following the procedure laid down in the land Development Ordinance or if the decision has been taken wrongly for any other reason, the steps should have been taken to revoke the Commissioner General's decision. Admittedly, no such step has been taken and the learned DSG admitted that no step has been taken to revoke the said decision even up to the time of arguing this matter. Furthermore, it appears that the Commissioner General has not arrived at an arbitrary decision in making the direction contained in P-21. As the Divisional



Secretary decided that the petitioner is a fit and proper person to issue a permit, after adopting the procedure laid down in the Ordinance, the petitioner has been issued a permit in 1994. Only the fact that the age of the petitioner is less than 18 years has not been brought to the attention of the Divisional Secretary when issuing that permit. The Commissioner General has considered those circumstances, the long period of possession of the petitioner and directed to issue a lawful document to the petitioner to possess the portion of land in question. In addition, considering the fact that it is not a fault of the petitioner that he was issued a permit in 1994, the Commissioner General made the direction contained in P-21 to issue a lawful document to the petitioner to continue with his possession to the portion of land in question.

Therefore, the direction given in P-21 is valid and lawful. According to the Section 4(2) of the Land Development Ordinance, the 3<sup>rd</sup> respondent, the Divisional Secretary is bound to comply with the direction given by the 1<sup>st</sup> respondent, Commissioner General of Lands.

Although it is stated in paragraph 25(h) of the statement of objections of the 1<sup>st</sup> to 4<sup>th</sup> respondents that the petitioner has failed to demonstrate any breach of statutory duty on the part of any of the respondents that would entitle him to a Writ of Mandamus, there is a clear breach of statutory duty on the part of the 3<sup>rd</sup> respondent, the Divisional Secretary, by not complying with the direction given by the 1<sup>st</sup> respondent in P-21.

There is no doubt that the permit bearing No. ୪୩/ପ୍ରୱେ/83/804 dated 21.07.1994 is not a legally valid permit as stated in P-15 because the petitioner was under 18 years at the time of issuing the said permit. Therefore, the Writ of Certiorari prayed for in the prayer (b) cannot be granted. However, for the reasons stated above, a fresh permit should be

issued to the petitioner on the direction given in P-21 by the Commissioner General of Lands. Hence, I issue the Writ of Mandamus prayed for in the prayer (c) of the petition directing the 3<sup>rd</sup> respondent to issue a new permit to the petitioner in respect of the portion of land in question.

I make no order as to the costs of this application.

**JUDGE OF THE COURT OF APPEAL**

M. T. Mohammed Laffar, J

I agree.

**JUDGE OF THE COURT OF APPEAL**