

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

Galkotuwegedara Dharmadasa
Gurumada, Gangeyaya, Sorabora,
Mahiyanganaya.

C.A. (Writ) Application No.65/2011

PETITIONER

Vs

1. R.P.R. Rajapaksha
Commissioner General of Lands
Land Commissioner General's
Department
No. 07, Hector Kobbekaduwa Mw
Colombo 07.
2. W. Karunadasa
Nuwan Niwasa,
Gurumada, Gangeyaya
Mahiyanganaya.

3. Assistant Commissioner of Lands
Deputy Land Commissioner's Office
Mahiyanganaya.
4. M.M. Thilakarathne
Deputy Land Commissioner
Deputy Land Commissioner's Office
Mahiyanganaya.
5. Land Officer
Deputy Land Commissioner's Office
Mahiyanganaya.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Dr. Jayatissa De Costa PC with
Wijeratne Hewage for the
Petitioner.

Mr. Unamboowa D.S.G. for the
1st, 3rd and 5th Respondents.

ARGUED ON

: 17th September, 2014

DECIDED ON

: 19th December, 2014

Deepali Wijesundera J.

The petitioner has prayed for a writ of certiorari to quash the order **(P6)** of the 1st, 3rd, 4th and 5th respondents cancelling the permit given to the petitioner and also for a writ of Mandamus to compel the 1st, 3rd, 4th and 5th respondents to implement the decision referred in **P3** and **P4**. The petitioner informed court that he is only seeking the relief in prayer **(b)** of the petition. The petitioner was granted a permit dated 29/03/2001 under the Land Development Ordinance for the land described in the permit marked **P1**. The petitioner has partly built a house in the said land and given it to the 2nd respondent. The 2nd respondent when asked to leave has refused and petitioner has filed an action in the District Court where he has got the judgment to eject the 2nd respondent. The 2nd respondent has filed an appeal in the High Court against the said judgment which the petitioner stated is still pending.

While the District Court case was pending the 3rd respondent has sent the letter marked **P3** to the petitioner informing him that the 2nd respondent will be given a land in extant of two roods outside the one acre portion of land already given to him by permit marked **P1**.

The learned counsel for the petitioner stated that the petitioner received a notice dated 15/09/2008 from the land office asking him to explain as to why the permit issued to him should not be cancelled. The petitioner has presented himself before the relevant officers and told them that he has not violated the conditions of the permit. He was sent a letter marked as **P6** cancelling the permit given to him. The petitioner has appealed to the respondents to remove the cancellation in two letters copies are marked as **P8** and **P9** both sent in November 2008. In the meantime the petitioner has got the District Court order implemented by a writ pending appeal and recovered the possession of the land.

The petitioner has received a notice to quit the said land (marked **P15**) dated 17/02/2010 the respondents have said that the petitioner has violated the conditions of the permit by alienating the land therefore in terms of *Sec. 110 of the Land Development Ordinance* the order cancelling the permit was issued.

The learned counsel for the petitioner submitted that respondents in cancelling the permit have not discharged these duties under Sec. 110 of the said Act properly and have acted in breach of the legitimate expectations of the petitioner. The petitioner's submission was that he

presented himself at the inquiry and made it clear to them that the 2nd respondent was already in possession of the said land when the said P1 permit was issued to him therefore the respondents can not say he alienated the said land. Therefore the respondents in cancelling the permit have not discharge these duties under Sec. 110 properly and justifiably.

The counsel for the petitioner further submitted dispute the undertaking given by the respondent by P3 to the petitioner to settle the dispute between him and the 2nd respondent by giving him a block of land the respondents have cancelled the permit given to the petitioner disregarding the undertaking given to the petitioner and acting in breach of the legitimate expectations of the petitioner citing the judgments in ***Dr. Gajaweera Vs Air Marshall G.D. Perera and Others 2005 2 SLR 224 and Wickramaratne Vs Jayaratne and Others 2001 3 SLR 161*** stated that decisions affecting legitimate expectations are subject to judicial review.

The Learned Deputy Solicitor General submitted that the letter P6 cancelling the permit given to the petitioner was sent on 16/11/2008 and the petitioner seeking to quash the said order of cancellation by a writ of

certiorari has filed the instant application on 31/01/2011 approximately three years later.

The counsel for the respondents stated that clause 13 of the permit states that the permit holder shall not execute or effect any deposition of the land provided that he may with the consent of the Government agent, mortgage his interests in the land to a society registered under the Co-operative Societies Ordinance of which he is a member. He stated that petitioner has conceded that he alienated the land to 2nd respondent at the inquiry thus petitioner has disposed of the land contravening the conditions of the permit and provisions of Sec. 46 of Land Development Ordinance.

The respondents further submitted that both the petitioner and the 2nd respondent has suppressed the institution of the District Court case and the appeal thereafter to the Additional Land Commissioner and due to this suppression the letter **P3** was sent as he was unaware of the said case. He further stated that both the petitioner and the 2nd respondent at the Mobile Service held at the Divisional Secretariat on 01/07/2004 have agreed to divide the land as stated in **P3**.

The respondents further stated that the Commissioner General of Land by letters dated 21/01/2010 and 17/02/2010 **P12** and **P14** has informed the petitioner the reasons for the cancellation of the said permit under Sec. 110 of the Land Development Ordinance and after a delay of one year this application has been filed and that the long delay does not warrant a writ of certiorari and cited the judgment in ***President of Malalgodapitiya Co-operative Society Vs Arbitrator of Co-operative Societies Galle 51 NLR 167.***

Sec. 110 of the Land Development Ordinance states;

110 (1) If on the date and at the time and place specified in a notice issued under section 106 or appointed by the Government Agent under section 109 (2) the permit holder appears and offers to show cause why his permit should not be cancelled, the Government Agent may, if he is satisfied after inquiry that there has been a breach of any of the conditions of the permit, make order cancelling the permit.

This section vests the authority on the Government Agent to cancel permits issued under the said Ordinance if he is satisfied after an inquiry that the permit holder has violated conditions of the permit. P1 permit specifically states in clause 13 of the schedule.

"The permit-holder shall not execute or effect any disposition of the land, provided that he may, with the consent of the Government Agent, mortgage his interest in the land to a society registered under the Co-operative Societies Ordinance, of which he is a member."

In R1 the 2nd respondent has stated at the inquiry that he paid Rs. 5,000/= to the petitioner to buy the land and also stated that $\frac{3}{4}$ share of the land belongs to the petitioner which fact they both have agreed at the Mobile Service of the Land Commissioner. The respondents have acting under Sec. 115 of the said Ordinance held the inquiry and decided on Sec. 110 that the petitioner has violated the conditions of the permit issued to him. Petitioner and the 2nd respondent both have not informed the inquiring officer about the land case filed in the District Court.

The petitioner cannot say he had legitimate expectations which were violated by the said cancellation **P6**. He was informed of this in 2008 by **P5**. Before that he has filed a case in the District Court and knew the outcome of the land officers.

The petitioner suppressed all these from the inquiring officer. The respondents have acted within the four corners of the law.

Petitioner has waited until 31/01/2011 to file the instant application to quash the said cancellation **P6** which is well over two years. He has not given a justifiable reason for the undue delay.

For the afore stated reasons the application of the petitioner is refused without costs.

JUDGE OF THE COURT OF APPEAL.