

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

In the matter of an application
for mandate in the nature of a
Writ of Mandamus and Certiorari
under and in terms of Article 140
of the Constitution of the
Democratic Socialist Republic of
Sri Lanka.

**CA (Writ) Application
No:397/2014**

Ambalangoda Mahawaduge
Kularatne Peiris (Deceased),
No.117, 2nd Lane,
Agunakolapelessa.

Petitioner

Kahapola Arachchilage
Milinawathie Fernando,
No.117, 2nd Lane,
Agunakolapelessa.

Substituted-Petitioner

Vs.

1. Mahaweli Authority of Sri
Lanka,
No.50, T.B. Jaya Mawatha,
Colombo 10.

2. Director General,
Mahaweli Authority of Sri
Lanka,
No.50, T.B. Jaya Mawatha,
Colombo 10.
3. The Secretary,
Ministry of Mahaweli and
Irrigation,
Mahaweli Authority of Sri
Lanka,
No.50, T.B. Jaya Mawatha,
Colombo 10.
4. P.H.M. Asanka Gunathilake,
President Project Manager,
Mahaweli Authority of Sri
Lanka,
Walawe Special Area,
Embilipitiya.
5. A. Kodituwakku
Divisional Manager,
Mahaweli Authority of Sri
Lanka,
Agunakolapelessa.
6. Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

Respondents

CA (Writ) Application No:397/2014

BEFORE : P. PADMAN SURASENA J (P/CA) AND
A.L. SHIRAN GOONERATNE J

COUNSEL : D.H. Siriwardena for the Substituted
Petitioner

Chaya Sri Nammuni SC for the
Respondents

ARGUED AND
DECIDED ON : 22.01.2018

PADMAN SURASENA J (P/CA)

Court heard the submissions of the learned Counsel for the substituted petitioner as well as the learned State Counsel.

In this application, the petitioner has prayed that [in prayer (c)] the order embodied in document produced marked '**P10**' which has the effect of cancelling the permit produced marked '**P1**' be quashed and [in prayer (d)] a writ of

mandamus against 1st – 5th respondents be issued to compel them to issue two permits to the petitioner in respect of Lots bearing No. 103 and 103A.

The said permit **'P1'** is a permit which has been issued for the period commencing from 08.11.2012 up to 31.12.2012. This means that it is a permit which has been issued for just one month. It is common ground that the above time period in this permit has not been extended.

Learned State Counsel drew the attention of this Court to the document produced marked **'R14'**. The document **'R14'** is a Deed by which the petitioner is alleged to have transferred this property namely, Lot 103 to another person. Learned Counsel for the petitioner concedes that a land given under a permit of this nature cannot be transferred to another person. However, it is his submission that the petitioner has denied this fact in his counter affidavit.

The effect of the denial of any knowledge of Deed **'R14'** by the petitioner would amount to an indication that somebody else has forged the signature of the petitioner to transfer the petitioner's property to a third person. Upon being queried by this Court from the petitioner to inform this Court as to what action he has taken in this regard, learned Counsel was unable to point to any action that had been taken by the petitioner in this regard.

It is the view of this Court that it cannot be the conduct of an owner of a land under such circumstances. This is because Section 114 of the Evidence Ordinance has empowered a court to presume the existence of any fact which it thinks likely to have happened, having regard to the common course of natural events, human conduct etc. In the light of the facts abovementioned this cannot be either the common course of natural events or the human conduct. Therefore, this Court is not inclined to believe the said denial by the petitioner. In these circumstances, it is the view of this Court that the impugned cancellation of the permit is justified.

Learned State Counsel also drew the attention of this Court to Clause 5 of the permit which has categorically stated that this permit has been given to the holder and holder alone. This means that the said permit is personal to the holder only. Learned Counsel for the petitioner has not been able to show us any legal provision which would indicate that his client is entitled to possess this land as the original permit holder whose name appears in the permit marked **'P1'** is now deceased.

Perusal of the permit marked **'P1'** also show that there is no nomination of a successor mentioned in it. Therefore, in any case the substituted petitioner is not legally entitled to possess this land. This is despite whether the cancellation of this permit by document produced marked **'P10'** is valid or not.

For the foregoing reasons this Court decides to refuse this application. Therefore, this application should stand dismissed with costs.

Learned Counsel brought to our notice that the Provincial High Court had stayed proceedings in some cases filed in this regard under the Provisions of the State Lands (Recovery of Possession) Act. It is our view that the State is entitled to recover the possession of this land according to law. The respondents are free to expedite the recovery proceedings according to law.

PRESIDENT OF THE COURT OF APPEAL

SHIRAN GOONERATNE J

I agree.

JUDGE OF THE COURT OF APPEAL

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