

**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 under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Wickramasinghe Arachchilage Bhathiya Indika  
Wickramasinghe  
No. 42/388, Harischandra Mawatha, Stage 1,  
Anuradhapura.

**Petitioner**

**Case No. CA (Writ) 381/2017**

**Vs.**

1. Land Commissioner General  
Land Commissioner General's Department,  
Land Secretariat, No. 1200/6, Rajamalwatta  
Road, Battaramulla.
2. Provincial Land Commissioner  
Provincial Land Commissioner's Department,  
North Central Province, Anuradhapura.
3. District Secretary  
District Secretariat, Maithripala Senanayake  
Mawatha, Anuradhapura.
4. Divisional Secretary  
Divisional Secretariat, Nuwaragampalatha East,  
Anuradhapura.
5. Land Officer  
Divisional Secretariat, Nuwaragampalatha East,  
Anuradhapura.

6. E. A. Ackman  
No. 116,413/4, Udunuwara Janapadaya,  
Nochchiyagama.

6A. P. Chandra Kusum Hemalatha

6B. Nilusha Priyadarshani Edirisinghe

6C. Tekla Priyadarshani Edirisinghe

All 6A, 6B and 6C Respondents of No.  
116,413/4, Udunuwara Janapadaya,  
Nochchiyagama.

**Respondents**

**Before:** Janak De Silva J.

**Counsel:**

Asthika Devendra with Kanil Maddumage for the Petitioner

Nuwan Pieris SC for the 1<sup>st</sup> to 5<sup>th</sup> Respondents

Jagath Wickremanayake P.C. with Migara Doss and Kanchana Sanjeewani for the 6th  
Respondent

**Argued On:** 22.01.2019

**Written Submissions Filed On:**

Petitioner on 11.03.2019

1<sup>st</sup> to 5<sup>th</sup> Respondents on 07.02.2019

6<sup>th</sup> Respondent on 11.03.2019

**Decided On:** 12.05.2020

**Janak De Silva J.**

The land forming the subject matter of this application is state land within the meaning of the Land Development Ordinance No. 19 of 1935 as amended (Land Development Ordinance). One David Appuhamy, father of the original 6<sup>th</sup> Respondent, was granted a permit for this land (P3). David Appuhamy passed away in 1991.

David Appuhamy had two brothers namely Sugathan Appuhamy and Wijeris Appuhamy, the grandfather of the Petitioner. Initially David Appuhamy had nominated Sugathan Appuhamy as his successor. At the time this nomination was made David Appuhamy was unmarried. Later upon his marriage the nomination of Sugathan Appuhamy became null and void in terms of section 52(1) of the Land Development Ordinance.

There is no dispute between the parties that David Appuhamy did not nominate a successor. Hence upon his death, succession must take place in terms of section 72 of the Land Development Ordinance and the 3<sup>rd</sup> Schedule therein.

However, the Petitioner claims that the land in issue was cultivated by his grandfather and his two brothers although the permit was issued to David Appuhamy. It is further claimed that David Appuhamy left this land and settled down in Nochchiyagama in 1945 with his partner and he was later granted lands in Nochchiyagama under the Mahaweli project. The Petitioner asserts that after David Appuhamy and Sugathan Appuhamy left the land, it was his grandfather Wijeris Appuhamy who solely possessed and cultivated it. Wijeris Appuhamy died in 1995 while his wife died in 2008. They had three sons and a daughter who is the mother of the Petitioner.

The Petitioner contends that from the time of the death of his grandfather in 1995, he was cultivating this land. According to him, his father started building a house on the land in 2009 which was halted in the same year due to financial constraints. The construction resumed in 2014 and was completed by January 2016.

Somewhere in September 2015, the Petitioner made a request to the 4<sup>th</sup> Respondent to grant the land in issue to him. Around October 2017 the Petitioner was made aware that the original permit (P3) has been transferred to the 6<sup>th</sup> Respondent.

The Petitioner in this application is seeking to challenge the actions or inactions of the 1<sup>st</sup> to 5<sup>th</sup> Respondents which resulted in the failure to issue a permit or grant to the Petitioner in terms of the Land Development Ordinance in respect of the land which the Petitioner and his predecessors were occupying and cultivating from 1937 and the illegal transfer of the permit (P3) to the 6<sup>th</sup> Respondent.

While all parties have filed extensive and undoubtedly helpful written submissions raising many interesting points of law, in my view Court must first examine whether the Petitioner has come to Court with clean hands in that he has not suppressed and/or misrepresented material facts to Court.

### ***Suppression and/or Misrepresentation of Material Facts***

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in *W. S. Alphonso Appuhamy v. Hettiarachchi* [77 N.L.R. 131 at 135,6]:

“The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the *King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbde de Poigns*. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing

a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

Our Courts have consistently applied this principle in applications for judicial review. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R.275], *Collettes Ltd. v. Commissioner of Labour* [(1989) 2 Sri.L.R. 6], *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88], *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360], *Jaysinghe v. The National Institute of Fisheries* [(2002) 1 Sri.L.R. 277] and *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* [(2007) 1 Sri.L.R. 24].

In fact, in *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67] this Court held that if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination.

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

“(1) A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.

(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make that fullest possible disclosure of all material facts within his knowledge.

(3) If there is anything like deception the Court ought not to go in to the merits, but simply say" we will not listen to your application because of what you have done.”

One of the main points made by the Petitioner is that he and his predecessors are in possession of this land from 1937. No doubt such fact if established will be an important consideration in deciding whether a permit should be issued to the Petitioner.

However, the application made by the Petitioner to the land Kachcheri (P7) dated 24.10.2015, which is signed by the Petitioner, indicates that he is not in possession of the said land. To further buttress his claim for a permit to the land in issue, the Petitioner asserted that his father started building a house on the land in 2009 which was halted in the same year due to financial constraints but that the construction resumed in 2014 and was completed by January 2016. The application (P7) dated 24.10.2015 indicates that there is no house on the land.

Furthermore, in order to sustain the position that the house was completed by January 2016 after which his parents moved into the house and continues to occupy it, electricity bills marked P6 (a) to P6 (r) have been produced. A closer examination of these bills indicates that they are in relation to a house situated at Prime Lands, Abhayapura, Anuradhapura. Clearly these pertain to a house situated on private land and not the land in issue.

In fact, they corroborate the statement made by the 6<sup>th</sup> Respondent, at paragraph 13 of the statement of objections, that the Petitioner and his predecessors who owned various lands adjacent to and extraneous to the land in issue, had sold the same on various occasions to third parties including a land sale company.

It is not every suppression or misrepresentation of fact that will be detrimental to a Petitioner in an application for judicial review. It must be a material fact and this depends on the facts and circumstances of each case.

In *Hotel Galaxy (Pvt) Ltd. and Others v. Mercantile Hotels Management Ltd.* [(1987) 1 Sri.L.R. 5] it was held:

*"To justify the dissolution of an injunction the suppression or misrepresentation should be of "such a character as to present to court a case **which was likely to procure the injunction but which was in fact different from the case which really existed**"*

*Thus, a misstatement of the true facts by the plaintiff which put an entirely different complexion on the case as presented by him when the injunction was applied for ex parte would amount to a misrepresentation or suppression of material facts warranting its dissolution without going into the merits". (Emphasis added)*

The Petitioner has sought a writ of mandamus directing that a permit be issued to him for the land in dispute. The issue of whether the Petitioner and his predecessors were in fact in possession of the land in issue from 1937 as asserted is a material fact in determining whether the Petitioner should be granted a permit. It is the same if his father had built a house on this land and came into occupation in 2016.

I hold that the Petitioner has sought to suppress and/or misrepresent material facts to Court and in fact has sought to mislead Court by producing electricity bills issued in relation to another land.

For all the foregoing reasons, the application is dismissed in limine. The Petitioner shall pay the 6<sup>th</sup> Respondent Rs. 75,000/= as costs of this application.

Application is dismissed in limine.

Judge of the Court of Appeal