

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

In the matter of an Application for Orders in the nature of Writs of *Mandamus* and *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Udula Nayani Anamika Upawansha,**  
No.46, Jaya Mawatha, Watapuluwa, Kandy.

**And also at,**

**Court of Appeal Case No.**  
**CA/WRT/365/21**

No. 643, Eeriyawetiya Road, Kiribathgoda,  
Kelaniya.

**Petitioner**

1. **National Housing Development,**  
Authority, Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
2. **Duminda Silva,**  
Chairman,  
National Housing Development Authority,  
Chittampalam A. Gardiner Mawatha,  
Colombo 02.
3. **K. A. Janaka,**  
General Manager,  
National Housing Development Authority.  
Chittampalam A. Gardiner Mawatha,  
Colombo 02.

4. **Indika Anuruddha**,  
State Minister for Rural Housing and  
Construction & Building Materials  
industries Promotion,  
2<sup>nd</sup> Floor, "Sethsiripaya", Battaramulla.
5. **District Manager**,  
National Housing Development Authority,  
Kandy.
6. **Surveyor General**,  
Surveyor General's Department,  
Colombo 05.
7. **Kandy Municipal Council**,  
Kandy.
8. **Ruwan Thilakerathna**,  
No.40, Watapaluwa,  
Kandy.
9. **Mahinda Rajapaksa**,  
Minister of Urban Development and  
Housing, Ministry of Urban Development  
and Housing,  
17<sup>th</sup> Floor, "Suhurupaya",  
Sri Subhuthipura Road,  
Battaramulla.
- 9A. **Prasanna Ranatunga**,  
Minister of Urban Development and  
Housing.  
Ministry of Urban Development and  
Housing,  
17<sup>th</sup> Floor, "Suhurupaya",  
Sri Subhuthipura Road,  
Battaramulla.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Shantha Jayawardena with Chamara Nanayakkarawasam, Dinesh De Silva and Azra Bashir for the Petitioner.

Madushka Kannangara, S.C. for the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

Baratha Abeynayake, instructed by Ms. Niluka Dissanayake for the 7<sup>th</sup> Respondent.

Niranjan De Silva for the 8<sup>th</sup> Respondent.

Argued on: 13.02.2024

Written Submissions on: 16.04.2024 by the Petitioner.  
22.04.2024 by the 1<sup>st</sup>, 3<sup>rd</sup>, 6<sup>th</sup> & 9A Respondents.  
28.03.2024 by the 8<sup>th</sup> Respondents.

Decided on: 22/05/2024

**MOHAMMED LAFFAR, J.**

The Petitioner to this Application seeks *inter alia*;

- a) an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to recommend for the approval to the Petitioner by way of sale Lot No. 194 of Preliminary Plan No. Maha/508 prepared by the Surveyor General;
- b) an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> Respondents to execute and grant the Petitioner the Title Deed for Lot No. 194 of Preliminary Plan No. Maha/508 prepared by the Surveyor General,
- c) an order in the nature of Writ of Certiorari quashing the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents in respect of Lot 1 of Plan No. 5256 dated 21.10.2002 prepared by the Surveyor General;

The Petitioner to this Application contends that the Petitioner's father, G.K. Upawansa, served as a public servant in the Department of Agriculture. In the early 1960s, the Department of National Housing introduced a housing scheme for public

servants in Watapuluwa Estate, aimed at providing housing solutions for them. As part of this scheme, the Petitioner's father applied for a plot of land within the estate depicted in Preliminary Plan no. Maha/508 marked P1. However, when lands were allocated to public servants, only a smaller lot, known as Lot 194 in the Preliminary Plan, reserved for Crown purposes, remained available for allocation to the Petitioner's father. Meanwhile, Lot 193, adjacent to Lot 194, initially designated for another individual, remained unclaimed as the said individual had migrated without completing the purchase process.

To compensate for the smaller extent of Lot 194, officials permitted the Petitioner's father to construct his house on both Lot 194 and Lot 193, under the understanding that Lot 193 would eventually be allocated to him. The Petitioner's father proceeded to construct a house covering both lots, completing it around 1968.

Around 29.05.1998, the Petitioner's father paid the consideration for Lot 193 to the 1<sup>st</sup> Respondent marked P2. In 2001, the Survey General initiated a survey of Lot 194 and prepared Plan No. Maha/5256, dated 21.10.2022. This plan identified Lot 194 by dividing it into two lots, Lot 1 and Lot 2. According to the Petitioner, payments and charges for Lot 194 were settled on 30.09.2003 marked P5.

It is contended by the Petitioner that despite purchasing Lot 194 on 30.09.2003, the 1<sup>st</sup> Respondent delayed executing the Deed of Transfer. Instead, the Kandy District Manager issued a letter on 1.10.2003 marked P6, titled 'Granting the title of the said Lot 194.' The letter acknowledged the completion of all payments for Lot 194 and assured the Petitioner that steps were underway to grant the Title Deed. Subsequently, on 06.04.2011, through Deed of Transfer No. 3970 attested by K.P. Ranaweera, Notary Public, the 1<sup>st</sup> Respondent transferred the title of Lot 193 to the Petitioner. This transfer was based on consideration paid as far back as 1998, marked as P7.

Thereafter, by a letter dated 11.03.2015 marked P8, addressed to the Kandy District Manager of the 1<sup>st</sup> Respondent, the Petitioner highlighted that although she had purchased Lot 194, she had only been issued a receipt and a letter (marked as P6) promising to issue the Deed in due course.

Subsequently, on 29.06.2015, the Kandy District Manager of the 1<sup>st</sup> Respondent, in a letter marked P9 addressed to the Superintendent of Survey of Kandy, acknowledged that the Petitioner's house extended to a portion of Lot 194. Consequently, Plan No. 5256 was prepared to consider the alienation of Lot 194 to the Petitioner. The letter

also noted discrepancies in the description of Lot 2 in Plan No. 5256 as a marshy land, which upon inspection, was found to be incorrect. The Superintendent of Survey was requested to amend the plan accordingly. Later, on February 25, 2017, the District Manager (Kandy) of the 1<sup>st</sup> Respondent, in a letter marked P14, informed the Petitioner that only Lot 1 in Plan No. 5256 could be alienated to her. This decision was made as Lot 2 within Lot 194 was deemed marshy land, and neither the Surveyor General's Department nor the Kandy Municipal Council recommended its alienation.

In light of the aforementioned circumstances, the Petitioner contends that the 1<sup>st</sup> Respondent's denial, refusal, or failure to issue the Petitioner the Title Deed for Lot No. 194 (as depicted in P1) is arbitrary, unreasonable, and *ultra vires* to the provisions outlined in the National Housing Development Authority Act, No. 17 of 1979. This action is deemed to violate the Petitioner's legitimate expectation, given the history of payments made, promises of issuance, and the Petitioner's continuous possession and development of the property in question.

Be that as it may, the National Housing Development Authority, 1<sup>st</sup> Respondent, contends that it was discovered that during the construction of a dwelling house on Lot 193, the Petitioner's father had encroached upon Lot 194 of Preliminary Plan No Maha/508, unlawfully constructing a part of the dwelling house on a portion of Lot 194.

In response to the Petitioner's father's requests, the Respondents initiated steps to determine whether Lot 194 could also be allocated to the Petitioner. A site inspection report pertaining to Lots 193 and 194, marked 1R1, was conducted for this purpose. Additionally, Plan No 5256, marked P3 with the petition, was prepared to identify the extent of the encroachment on Lot 194 and consider allocating it to the Petitioner.

Plan No 5256 divided Lot 194 into Lot 1 and Lot 2, with Lot 2 identified as marshy land. As marshy land cannot be alienated by law, the Respondents faced challenges in promptly allocating the land to the Petitioner. Despite uncertainty regarding the existence of marshy land within Lot 194, the Respondents, through letter 1R2 dated 02.07.2015, confirmed with the Surveyor General that no amendment could be made to Plan No 5256.

In further efforts to address the issue, the Respondents, through letter 1R3 dated 23.07.2015, proposed a joint site inspection with the 7<sup>th</sup> Respondent Municipal Council to assess the marshy land contained in Lot 194, specifically Lot 2 of Plan No 5256. Subsequently, based on the site inspection's findings, the 7<sup>th</sup> Respondent, through

letter 1R4 dated 17.09.2015, recommended the alienation of Lot 194, provided no development activity should be permitted on the areas identified as marshy land.

However, due to the presence of marshy land in a portion of Lot 194, identified as Lot 2 of Plan No 5256, it is contended that the Respondents cannot allocate this portion to the Petitioner.

In assessing the Petitioners claim of a legitimate expectation, one must consider what legitimate expectation is? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.

In **Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale**<sup>1</sup> the Court of Appeal described the principle of legitimate expectation as follows:

*“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”*

The Supreme Court, in the case of **Choolani Vs. Peoples Bank**<sup>2</sup> observed that;

*“In general terms, the legitimate expectation was based on the principle of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. A promise or a regular procedure could give rise to a legitimate expectation. The doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural justice.”*

When applying the above stated principles to the instant Application, the question that begs an answer is whether a promise, representation or assurance was given by the Respondents to the Petitioner. It is evident through the given the history of payments made, promises of issuance, and the Petitioner’s continuous possession and development of the property in question the Petitioner indeed had a legitimate expectation that the property in suit be transferred to her. However, this begs the question as to whether such an expectation created is legitimate?

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<sup>1</sup> CA/WRIT/328/215, CA Minutes of 19.02.2020.

<sup>2</sup> 2008 (2) SLR-p93

Academic Literature to this regard by Wade and Forsyth points to the idea that such an expectation created must be legitimate and free from legal encumbrances.

*"It is not enough that an expectation should exist; it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law."*<sup>3</sup>

It was further stated that

*"An expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation"*<sup>4</sup>

In further analyzing judicial literature to this concept, in **G.M. Nimalsiri v Col P.B.J. Fernando and others**<sup>5</sup> Justice Priyantha Jayawardene with Justices Ekanayake and Wanasundera, agreeing held;

*"an administrative error cannot be legitimate expectation...in order to succeed in an application for legitimate expectation, the expectation must be legitimate. Mistakes, decisions based on erroneous factual data or illegality cannot be the basis for a legitimate expectation."*

Therefore, the mere facts of a promise, representation being made would not render an expectation legitimate. Such an expectation to be legitimate must additionally be *intra vires*.

In assessing if such an expectation created by the Respondents is tantamount to being legitimate, reference must be drawn to the Sri Lanka Land Reclamation and Development Corporation Act No. 15 of 1968. In terms of Section 2(1) of the Act;

*"Where the Minister is satisfied that any area of land is a low-lying, marshy, waste or swampy area and where such land is situated within the Jurisdiction of any local authority, he shall in consultation with the Minister in charge of the subject of Local Government and the local authority or authorities within which such land is situated, or where such land is in an area for which a local authority has not been created, but is*

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<sup>3</sup> Page 452 of Administrative law, 11<sup>th</sup> edition, H. W. R. Wade & C. F. Forsyth.

<sup>4</sup> Page 454 of Administrative law, 11<sup>th</sup> edition, H. W. R. Wade & C. F. Forsyth.

<sup>5</sup> SCFR 256-2010. SC. Minute of 12-09.2015.

*in an area for which any other authority has been created and established by or under any law, then with the concurrence of the Minister in charge of such authority, by Order published in the Gazette, declare such area to be a Reclamation and Development Area for the purposes of this Act."*

Furthermore, Section 2A(1) of the Act states,

*"No person shall without the written approval of the Corporation, fill or develop in any manner whatsoever, any extent of land situated within any area of land declared to be a Reclamation and Development Area under section 2".*

Thereby, once an area is declared as a Reclamation and Development Area under Section 2(1) of the Act, no individual is allowed to fill or develop any portion of land within it without obtaining written approval from the Sri Lanka Land Reclamation and Development Corporation as per Section 2A(1).

Further, upon analyzing the Surveyor General's Plan No. 5256, it becomes evident that Lot No. 2 is classified as marshy land. As Plan No. 5256 was prepared by the Surveyor General, a recognized authority in land surveying, the classification of Lot No. 2 as marshy land holds significant weight and credibility in terms of Section 4 of the Survey Act which reads;

*"The decision of the Surveyor-General as to any question relating to land surveying or mapping shall be final and conclusive"*

Furthermore, in terms of Section 83 of the Evidence Ordinance,

*"The Court shall presume that maps, plans or surveys purporting to be signed by the Surveyor-General or officer acting on his behalf were duly made by his authority and are accurate.."*

Therefore, the court is mandated to presume that maps, plans, or surveys bearing the signature of the Surveyor-General are accurate representations of the surveyed area. Therefore, it logically follows that Lot No. 194, as depicted in Plan No. 5256 prepared by the Surveyor General, is situated within marshy land.

The classification of Lot No. 194 as marshy land raises a fundamental question: can a legitimate expectation arise when its fulfillment would necessitate contravening



Section 2A(1) of the Sri Lanka Land Reclamation and Development Corporation Act No. 15 of 1968? This provision expressly prohibits any construction or development on marshy land without prior written approval from the relevant authority.

Given that construction on marshy land is deemed *ultra vires* by the Act, any expectation formed based on representations or promises regarding such development cannot be considered legitimate. This is because the foundation of this expectation rests on actions that would violate statutory regulations. While the Petitioner may have expectations regarding the use or development of marshy land in Lot No. 194, these expectations cannot be deemed legitimate as they are contingent upon actions that are explicitly prohibited by law.

Furthermore, the preliminary plan, marked P1, provides that Lot No. 194, is an open wasteland housing a water tank and a hut with notations in the "Remarks" section, indicating that Lot No. 194 has been earmarked for "Crown purposes." This designation essentially means that the land is set aside for governmental or state-related activities and is not intended for private ownership or development.

By being reserved for "Crown purposes," Lot No. 194 falls under the jurisdiction of the state, thereby defeating any expectations the Petitioner may have regarding acquiring or utilizing the land for personal or private endeavors. Therefore, the designation of the land for state purposes prevents the Petitioner from forming a legitimate expectation regarding its acquisition.

Therefore, I hold that the failure to grant the said Lot No. 194 to the Petitioner by the 1<sup>st</sup> Respondent is not an irrational, arbitrary or a *mala fide* decision. Such was taken in line with the underlining policy considerations.

The lack of *mala fides* on the part of the Respondents is highlighted through the fact that the Respondents communicated to the Petitioner through letters marked P14 and P15 that the Respondents are willing to alienate the remaining portion of Lot 194 on which a part of the Petitioner's dwelling house is constructed (Lot 1 of Plan 5256) and since the Petitioner had made payment for the alienation of the entirety of Lot 194, the Petitioner was also informed that a portion of the payment would be reimbursed to the Petitioner.

Without prejudice to the foregoing facts, it is pertinent to note that under Section 9 of the National Housing & Development Act No. 17 of 1979 no person is entitled to more than one land which reads thus,

*“No person shall be entitled to purchase more than one house, flat or other living accommodation or any land for any such purpose sold under the provisions of this Part.”*

Since the Petitioner has already obtained title to lot No. 193, she cannot form a lawful expectation to obtain title to the lot in dispute, namely lot No. 194.

For the reasons detailed hereinabove, I dismiss the Application of the Petitioner and make no order as to the costs of this Application.

*Application dismissed. No costs.*

**JUDGE OF THE COURT OF APPEAL**