

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

In the matter of application for Mandates in the nature of Writs of Certiorari, Prohibition & Mandamus under and in terms of Article 140 of the Constitution.

Ms. Ginigaddara Appuhamilage Wasana
Ginigaddara,

No. 9B/166, Jaydiwadanagama,
Battaramulla.

PETITIONER

CA Writ Application No:

CA/writ/166/2016

Vs

1. National Housing Development Authority,
2. Ms. Srimathi Weerasinghe,
General Manager.
- 2a. Lalith Edirisinghe.
General Manager.
- 2b. K.A. Janaka.
Acting General Manager.

1st and 2nd Respondents both of:

No 37, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.

3. Sajith Premadasa, MP
Hon. Minister of Housing and Construction,
Ministry of Housing and Construction, 2nd
floor, Sethsiripaya, Battaramulla.
- 3a. Mahinda Rajapaksha, MP.
Hon. Prime Minister and Minister of
Finance, Minister of Buddhasasana,
Religious & Cultural Affairs and Minister of
Urban Development & Housing, Ministry of
Housing and Construction, 2nd floor,
Sethsiripaya, Battaramulla.
- 3b. Prasanna Ranathunga, MP.
Hon. Minister of Urban Development and
Housing, Ministry of Housing and
Construction, 2nd floor, Sethsiripaya,
Battaramulla.
4. Nishantha Herath, Officer-in-charge, Police
Station, Thalangama.
5. Ms. Renuka Priyadarshani Pothuwila
Subpostmistress, Sub Post Office,
Jayawadanagama, Battaramulla.

RESPONDENTS

Before: **Dhammika Ganepola, J.**

Damith Thotawatte, J.

Counsel Chrishmal Warnakulasuriya instructed by G.A.D. Ginigaddara for the
Petitioner.

Monohara Jayasinghe D.S.G for the Respondents except 5th Respondent.

Pulasthi Hewamanna with Harini Jyawardhana for the 5th Respondent instructed by Sanjeewa Kaluarachchi.

Written submissions tendered on: 09-09-2019, 14-11-2019 by the Petitioner
09-09-2019, 14-11-2019, 06-01-2021 by the 5th Respondent
20-09-2019, by the 1st to 4th Respondent

Judgement Delivered on: 03-07-2025

D. Thotawatte, J.

The Petitioner of this application, G. A. Wasana Ginigaddara, residing at No. 9B/166 Jayawadanagama housing scheme of the National Housing Development Authority (hereinafter sometime referred to as NHDA) at Battaramulla, claims that her residence is situated in lot No. 09 as depicted in the Survey plan bearing No. ෧෪෦ 144^A annexed to the petition marked as P2. The Petitioner further claims that she purchased this property from the 1st Respondent by the Deed of transfer bearing No.4695 and at the time of the said transfer, the 1st Respondent assured her that

- a) Access for motor vehicles to her property would be from the East
- b) Footpath for regular access would be provided from the West
- c) Motor vehicle access and parking/garage space was at the end of the said access from the East

The area designated for the aforesaid access and parking/garage facility was intended to be situated within an approximate portion of Lot No. 15, which lies adjacent to the Petitioner's property, and was to be regarded as common property for the benefit and use of the

residences bearing Nos. 9B/165, 9B/166, and 9B/167, situated at Jayawadanagama, Battaramulla.

From 1986, a Sub Post Office had been in existence in the plot of land described as Lot 15 and the 5th Respondent has served as the Sub Postmistress from around 2007. In 2016 the Petitioner being reliably informed that the areas demarcated as G1 and G2 of the land shown in the sketch annexed to the petition marked P3 is to be sold to the 5th Respondent, had sent a letter dated 10th February 2016 to the 2nd respondent communicating her objections and demanding withdrawal of the said decision.

Petitioner states that considering the boundary stones erected depicting the portion of land to be sold she has reasonable apprehension and fear the access road and the parking facilities enjoyed by her will be denied or withdrawn by the said unlawful actions of one or more of the Respondents and that their actions may have been influenced by collateral motives and tainted with mala fides.

An appeal dated 4th April 2016 addressed to the 3rd Respondent, demanding to uphold the Petitioner's legitimate entitlement to the said access road and parking area, had received no response, and an attempt to secure a meeting with the 3rd Respondent had also failed. In addition, the Petitioner's proposal submitted to the 2nd Respondent, whereby the Petitioner, along with other interested neighboring parties, had expressed willingness to purchase the said portion of land at a reasonable price, had also been disregarded.

The Petitioner has filed this Application seeking, inter alia, the following substantive reliefs:

- (b) Grant and issue a mandate in the nature of Writ of Prohibition preventing the 1st to 3rd Respondents and/or their servants and/or agents and/or those exercising powers under them from proceeding to any further steps to convey or dispose of any lands from and out of the area depicted more fully as Lot 15 on survey plan bearing No. ෧෩. 144^A marked "**P2**" above, to anyone other than the Petitioner and those residents of houses bearing No's. 9B/165, 9B/166 and 9B/167 in a manner that would deny the Petitioner her motor vehicle access and garage/parking area as hitherto occupied and enjoyed;
- (c) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st to 3rd Respondents and/or their servants and/or agents and/or those exercising powers under them to take immediate action according to law, to carry out and conclude a comprehensive inquiry/investigation into the Petitioner's above Appeal dated 4th April 2016 marked "**P7**" above prior to proceeding to any steps to convey or dispose of any lands from and out of the area depicted more fully as Lot 15 on survey plan bearing No.

කො. 144^A marked "**P2**" above to anyone other than the Petitioner and those residents of houses bearing No's. 9B/165, 9B/166 and 9B/167 in a manner that would deny the Petitioner her motor vehicle access and garage/parking area as hitherto occupied and enjoyed;

- (d) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st to 3rd Respondents to offer the said land area, in terms of law for sale to the Petitioner and those residents of houses bearing No's. 9B/165, 9B/166 and 9B/167, in the event there is a lawful need to so dispose of same by sale, depicted morefully as Lot 15 on survey plan bearing No. කො. 144^A marked "**P2**" above, which was the area allocated to the Petitioner for her motor vehicle access and garage/parking area as hitherto occupied and enjoyed;
- (e) Grant and issue a mandate in the nature of Writ of Certiorari, directing the 1st to 3rd Respondents, in the event a purported decision has been made by the 1st to 3rd Respondents during the pendency of this application without the knowledge of the Petitioner to sell or convey to the 5th Respondent any areas of land depicted morefully as Lot 15 on survey plan bearing No. කො. 144^A marked "**P2**" above, to produce same in Your Lordships' Court and quashing same or permit, the Petitioner to amend her prayer accordingly seeking a quashing order of same;

The petitioner's application is based on the survey plan bearing No. කො. 144^A marked "P2". However, P2 is a plan depicting Lot No. 09, and this plan merely shows that its eastern boundary is Lot. No. 15 and does not depict the extent, roadways or the boundaries of Lot No.15. The Petitioner has annexed as P3 an enlarged sketch purported to show Lot No's. 08, 09, 10, 11, 12 and 15. Although P3 appears to show the existing Sub Post Office building, the access road and the parking area, there is no indication as to who has prepared this sketch or its scale. Further, as the 1st to 4th Respondents have not accepted P3, and as such, no reliance can be placed on its accuracy. I am unable to consider the P3 sketch in support of the Petitioner's contentions.

The Petitioner does not claim ownership over Lot No.15. The Petitioner's rights over Lot No.15 stems from the claim that at the time of purchasing her property the 1st Respondent assured her that the vacant area of Lot No. 15 will be considered as common property on behalf of herself and her neighbors to be used for vehicular and pedestrian access to their properties and would also be available for parking. The Petitioner states that this assurance was one of the reasons that motivated her to purchase the property (Lot No.09), and since the said purchase, she has been making use of Lot No.15 for the aforesaid purposes. Under the circumstances, the Petitioner claims a legitimate expectation that she would be permitted to continue to avail

herself of the said access and parking facilities within Lot No. 15 without obstruction or interference.

As recognized by Sri Lankan jurisprudence, for a legitimate expectation to arise, it must be based on a clear representation, promise, established practice, or a consistent course of conduct by a public authority¹. Mere hopes, desires, wishes, or aspirations, however genuine or sincere, fall short of the threshold required to establish a legitimate expectation. The burden is on the individual claiming legitimate expectation to demonstrate that an unqualified representation was made.²

The 1st to 4th Respondents have vehemently denied that any assurance or undertaking was given at any time to the Petitioner indicating that the petitioner will have access or parking space from Lot No.15. The Petitioner has been unable to submit any official or independent proof that any such understanding or arrangement existed regarding Lot No.15, other than to annex as P4 photographs which inter alia supposed to depict the vehicles parked in Lot No.15. This pictorial evidence has also been denied by the 1st to 4th Respondents and the 1st to 4th Respondents had further submitted that the Petitioner has unlawfully constructed a garage on land to which she has no title.

The Petitioner has further referred to the portion of the Deed of transfer bearing No.4695 (annexed marked as P1) at page 4 which state that the Petitioner is entitled for all common rights of way and servitudes, in order to claim that there was an expressed assurance or undertaking between the Petitioner and the 1st Respondent. This, however is a common clause in a transfer deed and cannot be considered to refer to vehicular or pedestrian access through Lot No.15 or its usage to park vehicles.

On the above grounds, I hold that the Petitioner has failed to establish the existence of legitimate expectations regarding her purported rights over Lot No.15.

Further, the conflicting positions of opposing parties represent disputed facts. In Sri Lankan writ jurisdiction, the principle of disputed facts plays a crucial role in determining whether the Court will exercise its discretionary power to grant prerogative writs. In *Thajudeen v Sri Lanka Tea Board and Another*³ it was held: "Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue".

¹ *M.R.C.C. Ariyaratne and others vs. Inspector General of Police and others* SC FR Application No. 444/2012

² *M. U. Samarasinghe vs. Hon. Janaka Bandara Tennekoon and others* CA WRIT APPLICATION 235/2013

³ 1981 2 Sri.LR 471

The position of the 5th Respondent (the prospective purchaser of the disputed land) is that the existing Sub Post Office is situated on Lot No.14 and not Lot No.15 as declared by the petitioner and the land she is attempting to purchase is the said Lot No.14. As proof of, the 5th Respondent has submitted the letter dated 12th February 2023 (annexed to the objections as 5R4) of Colombo District Manager of NHDA, requesting to provide the 5th Respondent a survey plan of Lot No.14 as it is decided to transfer the building bearing No. 95/4 to the 5th Respondent. The 5R4 letter and the plan issued by NHDA marked as 5R5 clearly shows that the plot of land and the building the 5th Respondent is attempting to purchase is Lot No. 14 and not Lot No. 15. The 5th respondent in her objections has categorically stated that she has no claim regarding Lot No.15.

In addition to the rights claimed by the Petitioner arising from the doctrine of legitimate expectation, the Petitioner further contends that having regard to the purpose, scope, and statutory framework of the National Housing Development Authority Act, the purported attempt by the Respondents to alienate or dispose of the disputed portion of land is ultra vires and/or unlawful. However, the Petitioner has failed to specifically establish in what manner the actions of the Respondents amount to a contravention of the express provisions of the said Act.

The Petitioner, in her written submissions, has further asserted that the conduct of the Respondents is procedurally improper and/or unreasonable. However, other than the allegation that the 3rd Respondent failed to respond to the Petitioner, no material has been submitted to substantiate any claim of unreasonableness or procedural impropriety on the part of the Respondents. Moreover, it is pertinent to note that, at least subsequent to the filing of this application, there have been multiple attempts by the parties to resolve the matter amicably. In the circumstances, it cannot be reasonably contended that the Petitioner was deprived of an opportunity to be heard.

The position of the 1st to 4th Respondents throughout has been that they intend to lawfully hand over a block of land to the 5th respondent for the purpose of maintaining a post office, and this land does not coincide with any part of the land that is lawfully owned by the petitioner. Further, the Respondents have submitted that the petitioner cannot institute legal proceedings to compel the Respondents to sell state land to her and her neighbors.

The petitioner has failed to establish any of the grounds on which they relied upon for the relief prayed. In the circumstances, I do not find any merit or justification for judicial intervention. This application is accordingly dismissed. I make no order as to costs.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree

Judge of the Court of Appeal