

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

Court of Appeal Case No.

CA/WRT/0391/2020

Anoma Nilmini Senarathna

No 08B, 3rd Mawatha
Amapara.

Petitioner

Vs.

1. **M.G. Ioku Hamine** Alias **K Karunapali**
Siwmini Se' Viharaya,
08th Mawatha
Nawagampura
Ampara.
2. **D.M.L. Bandaranayake,**
District Secretary,
District Secretariat,
Ampara.
3. **R.M.C.M. Herath,**
Commissioner General of Lands,
Land Commissioner General's Department
"Mihikatha Medura" Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

4. **Thakshila Gunarathna,**
Deputy Commissioner General of land
Ampara
Deputy Land commissioner's office,
District Secretariat,
Ampara.
5. **H. S. N. De Soyza Siriwardana,**
Divisional Secretary of Ampara
Divisional Secretariat,
Dammarathana Road, Indrasarapura
Ampara.
6. **R.A.A.K. Ranawake,**
Secretary to the Ministry of lands and Land
Development,
Land Commissioner General's Department
"Mihikatha Medura "Land Secretariat
No. 1200/6, Rajamalwatta Road,
Battaramulla.
7. **S.M.Chandrasena,**
Minister of Lands and Land Development
Land Commissioner General's Department
"Mihikatha Medura "Land Secretariat
No. 1200/6, Rajamalwatta Road,
Battaramulla.

Respondents

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

Counsel: Manohara De Silva, P.C. with Keerthi Gunawardena and Ms.
Bupathie Kahathuduwa for the Petitioner.

Amasara Gajadeera, S.C. for the Respondents except the 1st
Respondent.

K.G. Jinasena, with Ms. Mihiri Kolmbage for the 1st Respondent.

Argued on: 13.12.2023.

Written Submissions on: 24.01.2024 by the Petitioner.
30.01.2024 by the 1st Respondents.

Decided on: 20.02.2024.

MOHAMMED LAFFAR, J.

The Petitioner in this Application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution, seeking discretionary remedies of Writs of Certiorari, Mandamus, and Prohibition.

The subject matter of this Application is Lot No. 681 in Plan No. 280007, which is more fully described in the Surveyor General's Plan dated 21-03-2018, marked as P3 & there is no dispute as to the identification of the subject matter. The subject matter is state land that was originally given under a long-term lease to one R.M.P. Piyadasa Costa, who is the late husband of the 1st Respondent.

The Petitioner states that there was an agreement entered into by and between the Petitioner and the said R.M.P. Piyadasa Costa to sell the premises in suit to the Petitioner, and accordingly, after the demise of R.M.P. Costa, the Petitioner paid a sum of Rupees ten million to the 1st Respondent. P4 and P6.

The Petitioner further states that in terms of the agreement dated 06-07-2012 marked as P7 entered into by and between the Petitioner and the 1st Respondent, the Petitioner agreed to purchase the subject matter from the 1st Respondent for a sum of Rs. 19 Million and accordingly, the possession of the same was handed over to the Petitioner.

The Petitioner states that a sum of Rs. 400,000/- was paid to the 5th Respondent to execute a long-term lease agreement in her name (P11). Additionally, at the request of the 1st Respondent, the electricity bills and

the water bills were transferred to the name of the Petitioner [P12, P13(a), P13(b), P14(a), and P14(b)].

In this scenario, the Deputy Commissioner General of Land (Battaramulla), by letter dated 01-02-2013 (P15), requested the Deputy Commissioner General of Land (Ampara) to take necessary steps to revoke the long-term lease given to the 1st Respondent and execute a new long-term lease in favour of the Petitioner. Subsequently, the Land Kachcheriya also decided to grant a long-term lease in favour of the Petitioner [P18(b)].

By letter dated 18-07-2017 (P26), the 4th Respondent informed the 3rd Respondent that necessary steps are taken to revoke the long-term lease granted to the 1st Respondent and to execute a new lease agreement in favour of the Petitioner. Subsequently, by letter dated 16-09-2020 (P34), the Commissioner General of Lands informed the 4th Respondent that it had been decided to continue with the lease given to the 1st Respondent and had recommended considering an alternative land for the Petitioner. Accordingly, by letter dated 23-02-2020 (P35), the 2nd Respondent informed the 1st Respondent that necessary steps are being taken to execute a long-term lease agreement in favour of the 1st Respondent. By letter dated 14-08-2018 (P36), the 3rd Respondent requested the 2nd Respondent to suspend the execution of a lease agreement pertaining to the subject matter until a further inquiry is over.

In those circumstances, the Petitioner states that the decision by the 3rd Respondent to allow the 1st Respondent to continue with her lease and not to grant the Petitioner a long-term lease is illegal, malicious and arbitrary, and therefore, seeking mandates in the nature of *inter-alia*,

1. A Writ of Certiorari quashing the documents marked as P34, P35 and P36.
2. A Writ of Mandamus directing the Respondents to carry out the decision contained in the document marked P15 and to implement the decision of the Land Kachcheri as reflected in P18 (a) and P18 (b).

3. A Writ of Prohibition, prohibiting the Respondents from executing a lease agreement in favour of the 1st Respondent and handing over the possession of the subject matter to the latter.

It is settled law that a party seeking prerogative relief should come to Court with clean hands. The expression is derived from one of Equity's maxims - '*He who comes to Equity must come with clean hands.*' Clean hands denotes a clean record with respect to the transaction with the Respondent. In **Perera vs. National Housing Development Authority**¹, the Court of Appeal observed that,

"It is also relevant to note that the petitioner has submitted to this Court a privileged document which he is not entitled to have in his possession. He has not explained the circumstances under which he came to possess this document. Writ being a discretionary remedy the conduct of the applicant is also very relevant. The conduct of the applicant may disentitle him to the remedy."

The Supreme Court of India in **S.P. Chengal Varaya Naidu Vs. Jayanthan**² observed that,

"a person who approaches the Court must come with clean hands, if the applicant is not clean, no relief can be granted."

Admittedly, the subject matter is State land given by the State to one R.M.P. Piyadasa Costa on a long-term lease. As such, the agreement entered into by and between the Petitioner and the said lessee to alienate the said premises to the Petitioner is illegal. Similarly, the subsequent documents marked as P7 (the Petitioner agreed to purchase the subject matter from the 1st Respondent for a sum of Rs. 19 Million and accordingly, the possession of the same was handed over to the Petitioner), P8, P9 & P10 (the 1st Respondent and her children renouncing their rights), P13 (a), P13 (b), P14 (a) and P14 (b) [transferring electricity bills and the water bills in the name of the Petitioner] are also illegal and unlawful. The

¹ 2002 (3) SLR-p50.

² AIR 1994 (1)SCC.

document marked P12 is a letter dated 06-07-2012 dispatched by the Petitioner to the Electricity Board of Ampara stating that the subject matter has already been transferred in the name of the Petitioner which is erroneous. Moreover, the purported agreement entered into by and between the Petitioner and the 1st Respondent handing over the possession of the subject matter to the Petitioner is unlawful, illegal and contrary to the provisions of the State Lands Ordinance. The Petitioner has no lawful right to obtain possession of the state land from the 1st Respondent. In this scenario, having considered the conduct of the Petitioner, it is the considered view of this Court that the Petitioner has invoked the writ jurisdiction of this Court not with clean hands, and therefore she is not entitled to the reliefs as prayed for.

It is pertinent to note that the 4th Respondent by letter dated 27-05-2011 (P5) informed the 3rd Respondent that the 1st Respondent along with the concurrence of her children has requested a long-term lease of the subject matter in her name. This fact is substantiated with the document marked as P11 by which the 1st Respondent has deposited a sum of Rs. 400,000/- for the purpose of obtaining a long-term lease of the premises in dispute. As such, it is manifest that the 1st Respondent or her children did not intend to renunciate their rights in respect of the subject matter.

In the case of **Jayaweera Vs. Asst. Commissioner of Agrarian Services**³ it was observed by the Court of Appeal that,

“a Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has the discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”

I shall now deal with the question of legitimate expectation of the Petitioner. In this regard, H.W.R.D. Wade defines the doctrine of legitimate expectation as follows;

³ 1996 (2) SLR 70

“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. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after a close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.”.

Page 452 of Administrative law, eleventh edition, H. W. R. Wade & C. F. Forsyth.

“An expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation”.

Page 454 of Administrative law, eleventh edition, H. W. R. Wade & C. F. Forsyth.

The Supreme Court in **G.M. Nimalsiri v Col P.B.J. Fernando and others**⁴ (Justice Priyantha Jayawardene with Justices Ekanayake and Wanasundera agreeing) held that,

“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.”.

The meaning and scope of the doctrine of legitimate expectation were considered at length in **Union of India vs. Hindustan Development Corporation**⁵, where it was stated that,

⁴ SCFR 256-2010. SC. Minute of 12-09.2015.

⁵ 1994 AIR 988, 1993 (3) SCC 499.

“time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in a regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectations should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense.”

When applying the above-stated principles to the instant Application, the question that begs an answer is whether a lawful promise or assurance was given by the Respondents to the Petitioner to lease out the premises in dispute.

It is pertinent to note that although the Deputy Commissioner General of Land (Battaramulla) by letter dated 01-02-2013 (P15) requested the Deputy Commissioner General of Land (Ampara) to take necessary steps to revoke the long-term lease given to the 1st Respondent and execute a fresh long-term lease in favour of the Petitioner and the Land Kachcheriya too decided to grant a long-term lease in favour of the Petitioner P18(b), the Petitioner is not entitled to form a legitimate expectation to have a lease agreement in her favour for the reason that the lease agreement which is in operation is in favour of the 1st Respondent has not been revoked. On the same footing, the decision of the Land Kachcheri to grant a long-term lease to the Petitioner is also unlawful. Besides, this Court is mindful of the fact that the Petitioner came in possession of the subject matter in terms of the purported illegal agreement marked as P7, and therefore it is

well established that the Petitioner is in unlawful and illegal possession. In those circumstances, the Petitioner is not entitled to form a legitimate expectation to obtain a long-term lease with regard to the premises in suit as the foundation and roots of such an expectation is illegal.

The Petitioner is seeking to quash P34, P35, and P36. By a letter dated 16-09-2020 (P34), the Commissioner General of Lands informed the 4th Respondent that it had been decided to continue with the lease given to the 1st Respondent and recommended considering an alternative land for the Petitioner. The Commissioner General contended that upon the demise of the original lessee on 24-10-2011, the lease agreement was transferred to the 1st Respondent, the spouse, and had not been lawfully revoked in accordance with the provisions of the State Lands Ordinance No. 8 of 1947 (as amended).

Therefore, the recommendation of the Land Kachcheri to grant a long-term lease to the Petitioner was deemed illegal. In such circumstances, the Petitioner was offered an alternative land, and the 1st Respondent was allowed to possess the premises as a lawful lessee. Subsequently, by a letter dated 23-02-2020 (P35), the 2nd Respondent informed the 1st Respondent that necessary steps were being taken to execute a long-term lease agreement in favour of the 1st Respondent. Additionally, by a letter dated 14-08-2018 (P36), the 3rd Respondent requested the 2nd Respondent to suspend the execution of a lease agreement concerning the subject matter until a further inquiry is conducted.

Having scrutinised the documents marked P34, P35, and P36, it is abundantly clear that these documents are in accordance with the provisions of the said Ordinance and are not illegal and/or arbitrary. Therefore, the aforementioned documents are not liable to be quashed.

For the foregoing reasons, this Court is of the view that the Petitioner is not entitled to the reliefs as prayed for in the prayers to the Petition. Thus, the Application is dismissed. The parties should bear their own costs as to this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL