

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

G. A. K. Jeewani Anuruddhika

No.54/08, Kohilawatta Road,

Gothatuwa New Town.

Petitioner

Case No. CA (Writ) 460/2021

Vs.

1. National Housing Development Authority  
Sri Chitampalam A. Gardiner Mawatha,  
Colombo 02.
2. Eng. K. A. Janaka  
General Manager (Acting),  
National Housing Development Authority  
Sri Chitampalam A. Gardiner Mawatha,  
Colombo 02.
3. Deputy General Manager (Property  
Management)  
National Housing Development Authority  
Sri Chitampalam A. Gardiner Mawatha,  
Colombo 02.

4. R.M. Subasinghe  
Manager (Colombo South)  
National Housing Development Authority  
Sri Chitampalam A. Gardiner Mawatha,  
Colombo 02.
5. G. A. K. Nalaka Wanshanatha  
No. R/3/1, National Housing Scheme,  
Serpentine Road, Borella,  
Colombo 08.
6. G. A. K. Kolitha Jayantha  
No. 103, Rubberwatta,  
South Niwandama,  
Ja-Ela.
7. G. A. K. Jeewaka Sirinatha  
No. 40/5 F/1, Yatiyanawatta Road,  
Dedigama, Piliyandala.
8. G. A. K. Jeewanthi Sulochana  
No. 534/2A, Gnanawimala Road,  
Athurugiriya.

**Respondents**

**Before** : Sobhitha Rajakaruna, J.  
Dhammika Ganepola, J.

**Counsel** : Chathura Galehena for the Petitioner.

N. Kulathunga S. C. for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Sadmal Rajapaksha for the 5<sup>th</sup> and 8<sup>th</sup> Respondents.

Written Submission : Petitioner : 02.11.2023  
tendered On 1<sup>st</sup> to 4<sup>th</sup> Respondents : 05.12.2023  
5<sup>th</sup> & 6<sup>th</sup> Respondents : 02.11.2023

Decided On : 07.12.2023

Dhammika Ganepola, J.

***Factual Matrix of the case***

The facts of the instant case are as follows. The National Housing Department had entered into a Lease Agreement with the Petitioner's father, Mr. G. A. K. Gunadasa on 26.03.1974 pertaining to the property bearing No. R/3/1, National Housing Scheme, Serpentine Road, Borella, Colombo. Pursuant to the National Housing Development Authority Act No. 17 of 1979 coming into operation on 01.04.1979, the 1<sup>st</sup> Respondent National Housing Development Authority [NHDA] had become the lessor of the said agreement under Section 73A of the said Act. Said original lessee Mr. Gunadasa had passed away on 29.08.1988 leaving his wife and five children i.e., 1<sup>st</sup> Petitioner and the 5<sup>th</sup> to the 8<sup>th</sup> Respondents as his heirs. The original lessee Mr. Gunadasa's wife had also passed away on 09.01.2010. Subsequently, the Petitioner had made a request to the 2<sup>nd</sup> Respondent moving the 2<sup>nd</sup> Respondent to grant the Petitioner her entitlement to the impugned property as an heir of the original lessee Mr. Gunadasa by letter dated 18.02.2010(P3).

Thereupon the Petitioner and the other heirs of the original lessee Mr. Gunadasa had been informed that the 1<sup>st</sup> Respondent NHDA has decided to transfer the rights over the disputed property to the heirs so that each heir shall be entitled to an 1/5 undivided share of the impugned property. Accordingly, by letter dated

25.08.2011(P5), each heir of the original lessee Mr. Gunadasa had been informed to submit the necessary documents in order for the 1<sup>st</sup> Respondent to transfer the said shares to each heir. In response to the said letter, the Petitioner has submitted the required documents to the 4<sup>th</sup> Respondent. However, the 5<sup>th</sup>-8<sup>th</sup> Respondents had failed to comply with the said letter marked P5. As such, yet again the Petitioner and the other heirs of the original lessee Mr. Gunadasa had been informed to submit the necessary documents within 14 days from the letter dated 22.03.2017 (P6) as they have failed to respond to the said letter P5. In response to the said letter P6, the Petitioner has forwarded the letter dated 06.04.2017 (P7), whereby the Petitioner had claimed that the officers of the NHDA are delaying the process of transferring the impugned property and accordingly has requested the 1<sup>st</sup> Respondent to transfer her share of the impugned property without delay. The Petitioner states that although she submitted all necessary documents to the 4<sup>th</sup> Respondent as requested for by letter P6, no response was received.

Thereafter, the Petitioner has submitted her grievance to the Parliamentary Commissioner for Administration. Through the Parliamentary Commissioner for Administration, the Petitioner had come to know that the 2<sup>nd</sup> Respondent has decided to transfer the disputed property to the 5<sup>th</sup> Respondent in terms of the provisions of Circular No.2018/୧୧. /ଇ. /02 dated 30.06.2018 (P13/1R6) which has come into effect from 23.04.2018. Further pursuant to a response received in respect of a right to information application, the Petitioner had got hold of the letter P18 issued by the 3<sup>rd</sup> Respondent to the 4<sup>th</sup> Respondent. Thereby, the Petitioner had come to know that the impugned property had been transferred to the 5<sup>th</sup> Respondent in terms of Circular No.2018/ ୧୧. /ଇ. /01 marked P12/1R5. However, the Petitioner states although the parties who claimed the property in question were asked to inform the above transfer by said letter P18, the Petitioner was not informed.

In the above context, the Petitioner contends that the above Circular No. 2018/ ୧୧. /ଇ. /01 marked P12/1R5 has no retrospective effect and therefore has no application in respect of deciding the entitlements of the heirs of the original lessee Mr. Gunadasa to the impugned property. Hence, it is claimed that the decision of the 1<sup>st</sup> Respondent to transfer the disputed property to the 5<sup>th</sup> Respondent is invalid. In view of the said contention, the Petitioner has requested the 2<sup>nd</sup> Respondent to transfer her entitlement of 1/5 undivided share of the property in question to her

name by letter P14. The Petitioner states that the decision reflected in P18 to act on the said Circular P12/1R5 and transfer the property to the 5<sup>th</sup> Respondent is *ultra vires*, illegal, unreasonable, and violates the rule of law and due process as the said Circulars P12 and P13 have no retrospective effect.

As such, the Petitioner seeks a *Writ of Certiorari* quashing the decision reflected in the P18 to apply Circular No. 2018/ දේ. /කළ./01(P12) in respect of transferring the property in question, a *Writ of Mandamus* compelling the 2<sup>nd</sup> Respondent to transfer an undivided 1/5 share of the disputed property to the Petitioner and a *Writ of Prohibition* prohibiting the 2<sup>nd</sup> Respondent from executing a deed of transfer in favour of the 5<sup>th</sup> Respondent.

In response to the Petition of the Petitioner, the 1<sup>st</sup>- 4<sup>th</sup> Respondents state that following the death of the original lessee Mr. Gunadasa, the Petitioner's mother along with the 6<sup>th</sup> - 8<sup>th</sup> Respondents submitted their willingness to transfer the impugned property to the 5<sup>th</sup> Respondent. However, the Petitioner had objected to such a transfer. As such, it is claimed that at that point the property could not have been transferred to the 5<sup>th</sup> Respondent. Subsequently, after the death of the Petitioner's mother, the Board of Directors of the 1<sup>st</sup> Respondent decided to transfer the property in question to the heirs of the original lessee Mr. Gunadasa so that each heir shall be entitled for an undivided 1/5 share of the property. Accordingly, even though the heirs of the original lessee Mr. Gunadasa were requested to submit the necessary documents to transfer the relevant undivided shares to them by letter dated 25.08.2011(P5) and letter dated 22.03.2017(P6), except the Petitioner, the other heirs (5<sup>th</sup>-8<sup>th</sup> Respondents) failed to submit such documents. Therefore, it is claimed that the 1<sup>st</sup>-4<sup>th</sup> Respondents were unable to take any final decision on the impugned matter in accordance with Circular No. 2011/දේ. /කළ./05(1R4) which prevailed at the relevant time. It has been submitted that the subsequent Circulars No.2018/දේ/කළ/01(P12/1R5) and No.2018/දේ/කළ/ 02 (P13/1R6) had come into effect in 2018 superseding the above Circular No. 2011/ දේ /කළ/05(1R4). Accordingly, the 1<sup>st</sup>-4<sup>th</sup> Respondents state that they have taken steps to transfer the rights over the property in question to the 5<sup>th</sup> Respondent in terms of the aforesaid Circulars No.2018/දේ/කළ/01(P12/1R5) and No.2018/දේ/කළ/ 02 (P13/1R6).

The 5<sup>th</sup> and 6<sup>th</sup> Respondents in response to the Petition of the Petitioner state that when an original lessee demises without naming a successor, in terms of Circular

No.2018/දේ. /කළ./02(P13/1R6), the property should be transferred to an heir of the deceased person who would establish that he/she is in possession of the said property. The 5<sup>th</sup> and 6<sup>th</sup> Respondents state that they managed to satisfy the 1<sup>st</sup> Respondent that the 5<sup>th</sup> Respondent was in possession of the property in question for almost 19 years. Further, as the 5<sup>th</sup> Respondent settled all necessary payments to effect the transfer of the said property, the 5<sup>th</sup> Respondent claims that the property has been duly transferred in the name of the 5<sup>th</sup> Respondent.

When this matter came up for the hearing all parties agreed that this application may be dealt with and determined based on written submissions. Accordingly, all the parties were allowed to file written submissions and the matter was fixed for the judgment. All parties filled written submissions.

### ***Legality of the Procedure Adopted by the 1<sup>st</sup>-4<sup>th</sup> Respondents in Transferring the Rights over the Property to the 5<sup>th</sup> Respondent***

Even though said original lessee late Mr. Gunadasa had been in possession of the impugned land under a lease agreement, before any Deed of Transfer was executed in favour of him in respect of the said property, he had passed away on 29.08.1988. As at that time, the procedure to be adopted in disposing of such land to a third party in such an event is specified under Circular No. 2011/ දේ. /ක./05 (1R4). Section 05 of the said Circular 1R4 stipulates the procedure to be adopted in disposing of the rights over the land to a third party in the event where the lease-holder passes away prior to obtaining a deed of transfer. Section 05 and 07 of the said Circular 1R4 provide as follows:

“05. දේපළ හිමිකරු/කාරිය ඔප්පුව ලබා ගැනීමට පෙර කුමන හෝ හේතුවක් මත මියගොස් ඇත්නම් ඒම දේපළ සඳහා උරුමකම් කීමට හැකි බිරිද/ස්වාමියා/දුදරුවන් යන අයට ඉදිරිපත් වී ඔවුන් විසින් හිමිකරනු ලබන පවුලේ අයකුට හෝ කීපදෙනෙකුට හෝ සියළුදෙනා නමින් හෝ ඔප්පුවක් ලබා ගැනීමේ අයිතිය පිළිගත යුතුය.

...

07. පවුලේ උරුමකම් කියනු ලබන සියළුම දෙනා විසින් වෙන් වෙන් වශයෙන් තම තමන්ගේ කැමැත්ත දිවුරුම් සහතික මගින් ඉදිරිපත් කළ යුතුය.”

Accordingly, it appears that in the event where a lease-holder passes away prior to obtaining a Deed of Transfer in respect of a land, the entitlement of the heirs of such deceased lease-holder to the respective land should be accepted by the 1<sup>st</sup> Respondent. It also appears that in the event where such heirs wish to transfer their rights to one or more of the heirs, all the heirs should submit an affidavit to that effect.

When the facts of the instant case are taken into consideration, it appears that pursuant to the death of the original lease-holder, the Manager (Colombo South) had caused to send the letters marked P5 and P6 to the Petitioner and the other heirs, requiring them to submit the documents specified therein in order to effect the respective deeds of transfer. It is observed that the said letters P5 and P6 are addressed to all heirs of the deceased original lease-holder and that they indicate that all heirs should submit the relevant documents for the 1<sup>st</sup> Respondent to arrive at a decision. It is on common ground that all heirs of the original lessee Mr. Gunadasa did not submit the relevant documents as required under letters P5 and P6. Thus, it appears that all conditions that were required to be satisfied in order for the 1<sup>st</sup> Respondent to effect the respective Deeds of Transfers in the name of the heirs of the original lessee Mr. Gunadasa, were not satisfied. Therefore, in terms of the prevailing law, the 1<sup>st</sup> Respondent could not have issued a Deed of Transfer transferring an undivided 1/5 share of the property in question to the Petitioner.

Moreover, the Respondents submit that after the demise of the original lessee Mr. Gunadasa, his widow, the Petitioner's mother along with the 6<sup>th</sup>-8<sup>th</sup> Respondents submitted affidavits indicating their consent to have the property in question transferred in the name of the 5<sup>th</sup> Respondent. In support of said position, the 1<sup>st</sup>-4<sup>th</sup> Respondents submitted documents 1R1(i)-1R1(iv). Further, the content of the letter P11 also supports the said position. However, said endeavour had failed in view of the Petitioner's objection. Hence, the Petitioner is stopped from denying the applicability of the same procedure in respect of the Petitioner's application in respect the transferring of undivided 1/5 share to the Petitioner. In the above circumstances, I am inclined to accept the stance of the 1<sup>st</sup>- 4<sup>th</sup> Respondents that

they were unable to take any final decision on the impugned matter in accordance with Circular No. 2011/දේ. /කළ./05(1R4), as there was no meeting of minds as required under the said Circular at the relevant time.

As the matters remain such, in 2018, Circular No.2018/ දේ. /කළ./01 (P12/1R5) and Circular No.2018/දේ./කළ./02 (P13/1R6), pursuant to a board decision made on 29 January 2018. Said Circular No.2018/ දේ. /කළ./01 (P12/1R5) and Circular No.2018/දේ./කළ./02 (P13/1R6) were issued in 2018 specifies the ambiguities that existed in respect of Circular 1R4 and specifies the procedure to be adopted in issuing a deed of transfer in the event where a lease-holder passes away intestate. Section 2 of Circular P12 provides that in such an event the property in question should be transferred to any family member who is capable of establishing that he/she is in possession of the said property irrespective of the consent of the others. The 5<sup>th</sup> Respondent had been able to establish that he was in possession of the property in question for almost 19 years. Accordingly, a decision had been taken by the 1<sup>st</sup> Respondent to transfer the property to the 5<sup>th</sup> Respondent. Further, it has been submitted that the 5<sup>th</sup> Respondent had settled all necessary payments to effect the transfer of the said property. Therefore, I hold that the 1<sup>st</sup>-4<sup>th</sup> Respondents in terms of the prevailing law at the time have taken steps to effect a Deed of Transfer in the name of the 5<sup>th</sup> Respondent and that said decision of the 1<sup>st</sup> Respondent as reflected in P18 is valid in law.

### ***Retrospective Effect.***

Nevertheless, the Petitioner challenges the validity of the said decision as reflected in P18, claiming that the 1<sup>st</sup>-4<sup>th</sup> Respondents should not have applied the provisions under Circular No.2018/ දේ. /කළ./01(P12/1R5) and Circular No.2018/දේ./කළ./02 (P13/1R6) in retrospective effect. The Petitioner contends that the subordinate legislation has no retrospective effect unless the enabling Act expressly or impliedly authorized its retrospective effect. The Petitioner relies upon the decisions of *The Attorney General Of Ceylon V.W.M.Fernando Honorary Secretary, Galle Gymkhana Club 79 NLR39, Dr.K.M.L. Rathnakumara and Others v. The Postgraduate Institute of Medicine and Others [S.C.Appeal No.16/2014 decided on 30<sup>th</sup> March 2016], Paramasothy v.Suppramaniam 39 NLR 532, De Silva v.Siriwardene 49 NLR 487 and Banumathy Puvirajakeerthy v.Nadarajah Indranee {C.A.1222/2000(F)decided on 22<sup>nd</sup>*



*July 2020.* The said Circulars P12/1R5 and /or P13/1R6 have no provision to give retrospective effect. Accordingly, the Petitioner submits that the decision of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents contained in the P18 to act on the Circulars P12/1R5 and /or P13/1R6 which came into effect in 2018 without retrospective effect is illegal and ultra vires. It is further claimed that the 1<sup>st</sup>-4<sup>th</sup> Respondents should have adopted the procedure laid down under Circular No. 2011/දේ. /කළ./05(1R4) in determining the rights of the heirs of the original lessee Mr. Gunadasa to the property in question.

It is observed that the 1<sup>st</sup>-4<sup>th</sup> Respondents could not arrive at a decision in respect of the property in question under Circular No. 2011/දේ. /කළ./05(1R4) while it was in effect as the relevant conditions under the said Circular were not satisfied. However, when the Circular No.2018/ දේ./කළ./01 (P12/1R5) and Circular No.2018/දේ./ කළ./02 (P13/1R6) came into effect in 2018, the same enabled the 1<sup>st</sup>-4<sup>th</sup> Respondents to make a decision in respect of rights over the impugned property. The rights of the 5<sup>th</sup> Respondent over the land could be determined by the 1<sup>st</sup>-4<sup>th</sup> Respondent under the said Circular No.2018/දේ. /කළ./01(P12/1R5 and Circular No.2018/දේ./කළ./02 (P13/1R6). Thus, it appears that the provisions under Circular P12/1R5 or P13/1R6 were not applied in retrospective effect by the 1<sup>st</sup>-4<sup>th</sup> Respondent.

The Petitioner asserts that the principle of retrospective effect must be applied based on the event of the original lease-holder's demise. Nevertheless, these Circulars 1R4, P12/1R5 and /or P13/1R6 involved in the instant application apply to the procedure in the execution of deeds and not in respect of the accrual of entitlement to the property. The basis for the alienation of property specified in the 1R4 is different from the basis specified in the P12/1R5 and /or P13/1R6. Anyhow the parties failed to obtain their entitlement as per Circular 1R4 at the time it was effected. The 5<sup>th</sup> Respondent has proved possession of the property subsequent to the issuance of Circular No.2018/ දේ. /කළ./01 (P12/1R5) and Circular No.2018/දේ./කළ./02 (P13/1R6) in order to secure a deed of execution in his favour. Therefore the 5<sup>th</sup> Respondent has relied on the said 1R5 and 1R6 Circulars prospectively and independent of any retrospective application over the rights of any other parties.

Further, in terms of the Section 8 of the National Housing Development Act NHDA has the authority to decide in whose favour the deed of transfer should be executed

as the owner of the property. The total effect of the Circular No. 2011/දේ./කළ./05(1R4) based on the aspect of consent of the respective family members of the original lease holder. In the instant application although the Petitioner has submitted the relevant document requested by the NHDA, the process of seeking consent of others have not been completed before issuing the Circulars No.2018/දේ./කළ./01 (P12/1R5) and No.2018/දේ./කළ./02 (P13/1R6).

It is important to note that the act of executing deeds by the 2nd and 3rd Respondents is a ministerial act that must be performed in a prescribed manner and in strict obedience to the existing law. Any public officer is compelled to adopt the existing law at the time of executing his/her duties unless there is an exceptional ground to consider laws retrospective effect. Therefore, the issue of applicability of Circulars 1R5 and 1R6 retrospectively would not arise as advanced by the Petitioner. Therefore, I hold that the contention of the Petitioner that the 1<sup>st</sup>-4<sup>th</sup> Respondents have acted *ultra vires* by applying the provisions under Circulars 1R4, P12/1R5 and /or P13/1R6 in retrospective effect has no merit.

The Petitioner strongly asserts that the 1<sup>st</sup> Respondent NHDA initially agreed to transfer an undivided 1/5 share of the property in question to each heir of the original lessee, Mr. Gunadasa, as confirmed in letters P4, P5 and P6. It is further stated that the 1<sup>st</sup> Respondent NHDA deviated from this original decision and instead opted to follow the procedures outlined in Circular No.2018/දේ./කළ./01(P12/1R5) and Circular No.2018/දේ./කළ./02 (P13/1R6), in 2018 pursuant to a board decision made on 29 January 2018. However, despite the 1<sup>st</sup> Respondent's instructions to all heirs of the original lessee to submit the relevant documents as stipulated in Circular No. 2011/දේ./කළ./05 (1R4) through P4, P5 and P6, heirs to the property in question except the Petitioner, failed to comply with the said instructions. It must be emphasized that any final decision under Circular No. 2011/දේ./කළ./05 (1R4) could only be arrived at in the event all requirements to be satisfied in order to transfer undivided 1/5 share to the Petitioner are satisfied. Circular 1R4 authorized the execution of a deed in the name of one or more or all members of the family with the consent of all heirs who shall submit their consent by way of affidavits. Nevertheless, all heirs of the original lessee, except the Petitioner, failed to comply with such requirement as required under Circular 1R4. Therefore, the 1<sup>st</sup> Respondent is barred from transferring any right to the Petitioner until such requirements under

the purported Circular are fulfilled. Accordingly, it is viewed that any deviation of the 1<sup>st</sup> Respondent from its original position is justifiable and legal.

### **Legitimate Expectation**

Further, in view of the letters P5 and P6 issued by the officers of the 1<sup>st</sup> Respondent, the Petitioner claims that she had a legitimate expectation that she shall receive rights to undivided 1/5 shares of the impugned property. The Petitioner strongly asserts that the 1<sup>st</sup> Respondent NHDA initially agreed to transfer an undivided 1/5 share of the property in question to each heir of the original lessee, Mr. Gunadasa, as confirmed in letters P4, P5 and P6.

The letters P5 and P6 issued by the Manager (Colombo South) NHDA to the Petitioner and the 5<sup>th</sup> to 8<sup>th</sup> Respondents indicate the inclination of the 1<sup>st</sup> Respondent NHDA to transfer the undivided 1/5 share of the property in question to each of the heirs of the original lessee, Mr. Gunadasa. Furthermore, said letters P5 and P6 required some documents to be submitted by the heirs of the original lessee Mr. Gunadasa to be considered for the transfer. However, it seems that the 5<sup>th</sup> to 8<sup>th</sup> Respondents have failed to act accordingly.

Furthermore, it must be emphasized that any final decision under Circular No. 2011/ඉද්. /කළ. /05 (1R4) which was in operation at the time could only be arrived at in the event all requirements to be satisfied in order to transfer the undivided 1/5 share to the Petitioner are satisfied. Circular 1R4 authorized the execution of a deed in the name of one or more or all members of the family with the consent of all heirs who shall submit their consent by way of affidavits. Nevertheless, all heirs of the original lessee, except the Petitioner, failed to comply with such requirement as required under Circular 1R4. Therefore, the 1<sup>st</sup> Respondent is barred from transferring any right to the Petitioner until such requirements under the purported Circular are fulfilled. Under such circumstances, it is apparent that the non-compliance on the part of the relevant parties of the requisites set out under Circular 1R4 rendered the 1<sup>st</sup> Respondent incapable of acting according to the letters P5 and P6.

The theme running throughout the application of the principle of legitimate expectation is that the relevant Public Authority should make a promise or adopt a

practice which represents how it is proposed to act under given circumstances. In any event, any promise or practice so adopted by a Public Authority should be in accordance with the law. An expectation which arises out of the letters P5 and P6 cannot be a legitimate expectation until the requirements set out in the said letters P5 and P6 and the requisites of Circular 1R4 are completely fulfilled. Hence the Petitioner cannot rely upon the claim of legitimate expectation in view of P5 and P6.

### ***Conclusion***

In the circumstances of this case and the reasons given above, I am not inclined to grant any relief as prayed for in the prayer to the petition. I order no cost.

Application is dismissed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal