

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

Kankanamage Deepa Samanthi,
No. 324/C'1, Aluthakkaraya,
Uswatakeyiyawa.

CA Writ application No: 11/2020

PETITIONER

-Vs-

1. Singakkarage Urusula Irin,
No. 324/C, Aluthakkaraya,
Uswatakeyiyawa.
2. K. Amitha Padmini,
C/O Kamala Gomes,
No.24/A, Pahala Kandawala,
Suriya Street. Thimbirigaskatuwa,
Negombo.
3. Divisional Secretary,
Divisional Secretary Office.
Wattala.
4. Provincial Land Commissioner,
C/O Districts Secretariat,
Gampaha.
5. Land Commissioner General's Department,
"Mihikatha Medura"
Land Secretariat,
1200/6, Rajamalwatta Road,
Battaramulla.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Dr. Sunil Coorey for the Petitioner.

S. N. Vigith Singh for the 1st Respondent.

Suranga Wimalasena, DSG for the 3rd to 5th Respondents.

Written submissions tendered on:

23.11.2023 by the Petitioner.

11.10.2023 by the 1st Respondent.

09.02.2024 by the 3rd to 5th Respondents.

Argued on: 29.08.2023

Decided on: 28.05.2024

S. U. B. Karalliyadde, J.

The Petitioner in this Writ Application is the recipient of the Permit dated 08.08.1998 marked as P1 in respect of the subject land in the extent of 0.087 Hectares, issued under Section 19(2) of the Land Development Ordinance, No. 19 of 1935 (as amended) (the Ordinance). The Petitioner, her husband, her parents and siblings were in occupation of two houses that were constructed in the said land and later on, one house was rented out by the younger sister of the Petitioner, the 2nd Respondent. On or about 2018, the Petitioner got to know that the house was leased by the 2nd Respondent by executing a notarial lease (P2) without the consent of the Petitioner. She made several complaints

to the Police (P3(a) to P3(c)) and the Divisional Secretary, Wattala, the 3rd Respondent (letter dated 24.04.2018 marked as P4) in that regard. The Petitioner received a letter dated 14.08.2018 marked as P7 issued by the 3rd Respondent informing her to come for an inquiry to be held on 27.08.2018. Pursuant to the Inquiry, the 3rd Respondent, by the letter dated 17.09.2018 marked as P9 requested the Petitioner to produce the income statement of her husband who is a driver in the Colombo Municipal Council. Consequently, the Petitioner produced her husband's income statement (marked as P10(c)) at the time of the issuance of the Permit marked as P1. After the inquiry was concluded the Petitioner was informed by the 3rd Respondent that, steps would be taken to cancel the Permit marked as P1 as it has been obtained by submitting false information.

Thereafter, the Petitioner received a copy of a letter dated 14.02.2019 marked as P11 written by the Land Commissioner General addressed to the 3rd Respondent where it has been stated that when considering the facts that the Petitioner's husband is a public servant and her mother is Widows' and Orphans' Pensioner it is proper to cancel the Permit marked as P1 and to reselect a person who will be entitled to a permit for the subject matter according to the current income status. By the letter dated 11.03.2019 marked as P12, the Petitioner was informed by the 3rd Respondent to hand over the Permit marked as P1, since the 3rd Respondent has been instructed by the Land Commissioner General to cancel the Permit. Thereafter, the 3rd Respondent, by the letter dated 27.05.2019 marked as P20, informed the Petitioner that she had obtained

the Permit marked as P1 furnishing false information at the land Kachcheri and an inquiry will be held facilitating the Petitioner to show cause as to why the Permit should not be cancelled. The 3rd Respondent issued a letter dated 19.07.2019 marked as P22 requiring the Petitioner to participate in an inquiry, but the Petitioner did not cooperate to hold the inquiry.

By the letter dated 04.10.2019 marked as P26 the 3rd Respondent informed the Petitioner that at the time of issuance of the Permit, the Petitioner had suppressed the fact that her husband is a public servant and obtained the Permit under the “low-income category”, which the Petitioner does not belong and therefore it has been decided to cancel the Permit and give it on a long-term lease to the Petitioner and her mother (1st Respondent) in terms of the provisions of the Ordinance. By P11 the Land Commissioner General has recommended to the 3rd Respondent to cancel P1 for the reasons that the husband of the Petitioner is a public servant and the mother of the Petitioner is a recipient of a Widows’ and Orphans’ Pension.

The Petitioner argues that the letters marked as P11 and P12 have been issued without any power or authority in law to do so and she was not married at the time she applied for the Permit and therefore she was not in a position at that time to furnish any information regarding the person to whom she is going to get married. The position of the Petitioner is that in terms of Section 106 of the Ordinance, a Government Agent could only issue notice of cancellation of an existing permit if he/she has failed to

observe conditions of the said permit already granted but in the instant matter the Petitioner has not violated any of the conditions of the Permit marked as P1.

Therefore, the Petitioner seeks the following substantive reliefs, *inter alia*,

(b) The letter dated 14/02/2019 sent by the 5th Respondent marked as "P-11" be quashed by an Order in the nature of Writ of Certiorari.

(c) The letter dated 11/03/2019 sent by the 3rd Respondent marked as "P - 12" be quashed by an Order in the nature of Writ of Certiorari.

(d) Restraining the 3rd Respondent from holding any inquiry on the basis of the aforesaid letters marked as "P-11" and/or "P-12".

The position of the learned DSG appearing for the 3rd to 5th Respondents is that the 2nd Respondent requested the 3rd Respondent to issue a separate permit to a portion of the subject land by the letter dated 23.04.2018 marked as R2 and by the letter marked as P4, the Petitioner made a complaint to the 3rd Respondent that the 2nd Respondent has violated her rights as a permit holder by executing a notarial lease. Thereafter, an office inquiry was held on 21.05.2018 (R4). However, as no settlement was entered between the parties, the 3rd Respondent by the letter dated 09.06.2018 marked as R5 reported this matter to the Provincial Land Commissioner (Western Province). By the letter dated 23.07.2018 marked as R6, the Provincial Land Commissioner (Western Province) informed the 3rd Respondent to hold an inquiry into that matter. Thereafter, the 3rd Respondent issued the letter marked P7 calling the Petitioner, the 1st and the 2nd

Respondents for an inquiry to be held on 27.08.2018. At the inquiry, it transpired that the Permit marked as P1 had been issued to the Petitioner as an individual falling into the “low-income category” despite the Petitioner’s husband being a salaried public servant. Then the letter marked as P9 was issued requesting the Petitioner to provide salary details of her husband as of the date the Permit marked as P1 was issued. The learned DSG appearing for the 3rd to 5th Respondents argues that the Petitioner had married on 17.02.1994 (R8) and according to the documents submitted by the Petitioner marked as P10(a) and P10(c), the Petitioner’s husband received a basic monthly salary of Rs. 4430/- as at 08.08.1998, the date on which the Permit marked as P1 was issued and this is contrary to the position taken up by the Petitioner, as in fact she was married at the time P1 was issued. Moreover, it transpired from the documents produced by the 1st Respondent marked as R9(a) and R9(b) that the Petitioner’s father was holding a pensionable post in a local authority. These facts were reported to the 5th Respondent by the 3rd Respondent in the letter dated 09.10.2018 marked as R10(a) and by the letter dated 06.12.2018 marked as R10(b) the 3rd Respondent sought advice from the 5th Respondent in respect of further steps to be taken on that matter. Then by the letter marked as P11 the 5th Respondent informed that it was appropriate to cancel the Permit and informed the Petitioner by the letter marked as P12 to hand over the Permit to facilitate the cancellation.

The position of the learned DSG appearing for the 3rd to 5th Respondents is that the Permit marked as P1 has been issued to the Petitioner on the premise that she fell into

the “low-income earning category” in terms of the Order 3(c)(ii) of the Land Development Ordinance Regulations (1981) (P18(a)) and Land Manual Order 102. Therefore, the Petitioner was not required to pay the “purchase amount” under Section 19(2) of the Ordinance and in terms of Section 19(5) of the Ordinance she was exempted from paying the said “purchase amount” on the basis that the Petitioner belongs to the peasant class (the low-income earning category) and this is evident on the face of the Permit marked as P1 as it does not contain an endorsement by the 3rd Respondent about the date on which the payment of annual instalments under the Permit must commence and the amount of each such instalment. In terms of the Petitioner’s marriage certificate marked as R8, the Petitioner in fact had been married for over four years before the Permit marked as P1 was issued and she ought to have supplied such information to the 3rd Respondent when applying for the permit. Therefore, the learned DSG appearing for the 3rd to 5th Respondents argues that this instant Application should be dismissed *in limine* as the Petitioner is guilty of suppression and misrepresentation of material facts.

It is trite law that the Court will not intervene by way of judicial review where there is suppression and/or misrepresentation of material facts in exercising the Writ jurisdiction of this Court. In the case of *Alphonso Appuhamy Vs. Hettiarachchi*¹ Pathirana J. had observed that;

¹ 77 NLR 131.

“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 Commissioners for the purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmond de Poignac - (1917) Kings Bench Division 486. Although this case deals with a writ of Prohibition the principles enunciated are applicable to all cases of writs or 13 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.”

In the case of *Sarath Hulangamuwa Vs. Siriwardena, Principal, Vishaka Vidyalaya and others*². Siva Selliah, J. held that,

² (1986) 1 SLR 275 at 282.

“Petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to this court, bare every material fact so that the discretion of this court is not wrongly invoked or exercised.”

Saleem Marsoof, J. in *Namunukula Plantations Ltd. Vs. Minister of Lands and Others*³ held that,

“If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.”

Vide; *Blanca Diamonds (Pvt) Ltd v Wilfred Van Else & Others*,⁴ *Jayasinghe Vs. The National Institute of Fisheries and Nautical Engineering and Others*,⁵ *Dahanayake and Others Vs. Sri Lankan Insurance Corporation Ltd. and Others*⁶, *Fonseka Vs. Lt. General Jagath Jayasuriya and Five Others*⁷.

The Petitioner in this instant Application has admitted in averment 7 of the Petition the fact that she got married in the year 1994, four years prior to the issuance of the Permit marked as P1 in the year 1998. However, it is observed that the Petitioner has not produced her marriage certificate before this Court. The fact that whether the Petitioner

³ [2012] 1 Sri LR 365.

⁴ (1997) 1 Sri LR 360.

⁵ (2002) 1 S.L.R. 277.

⁶ (2005) 1 SLR 67.

⁷ (2011) 2 Sri LR 372.

was married at the time of applying for the Permit marked as P1 is a material fact which has an important bearing on the question of the genuineness of the Petitioner in obtaining the Permit marked as P1. Even though the Petitioner argues that she was not married at the time she furnished the relevant information in applying for the Permit, the Petitioner neither disclosed the time in which she made the application to obtain the Permit nor has produced any material before this Court to prove the fact that she married after applying for the Permit. Therefore, this Court is of the view that the Petitioner is guilty of suppression or misrepresentation of material facts. Furthermore, this Court could observe a lack of *uberrima fides* on the part of the Petitioner as the Petitioner was married at the time of issuance of the Permit marked as P1 and she has not come before this Court with clean hands.

In the case of *Namunukula Plantations Ltd. Vs. Minister of Lands and Others* (supra) Saleem Marsoof, J. further held that,

“It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on, the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or

which he could have known by exercising diligence expected of a person of ordinary prudence.”

In *Fonseka Vs. Lt. General Jagath Jayasuriya*⁸ Abdus Salam, J. observed that,

“A maxim known almost during the whole of last century and having its origin in equity courts is that one must approach the court with clean hands. The maxim has been so indoctrinated in the legal system that almost all our courts, loath to entertain claims that are tainted with non-disclosure of material facts. It is particularly so when the benefit of the maxim is invoked by the respondent or raised by court exmero motu.”

It is evident from the letter marked as P26 that the Petitioner has suppressed the fact that her husband was a salaried public servant at the time of issuance of the Permit and had obtained the Permit marked as P1 under the “low-income category”. P26 states thus,

“කෙසේ වෙතත් බලපත්‍රය නිකුත් කරන අවස්ථාවේ පිය අසනීප තත්ත්වයෙන් පසු වූ බැවින් ඇය ඉදිරිපත් වී ඇති අතර, ඇය නමින් බලපත්‍රය නිකුත් කර ඇත. තව ද එම බලපත්‍රය නිකුත් කරන අවස්ථාවේ මෙම බලපත්‍ර ලාභිනියගේ සැමියා රජයේ සේවකයකු ලෙස වැටුප් ලබමින් සිට ඇති අතර ඇය එම කරුණු වසන් කර අඩු ආදායම් ලාභී පදනම මත බලපත්‍රය ලබා ගෙන ඇත.”

⁸ (2011) 2 Sri LR 372.

Under the above-stated circumstances, it is apparent that the Petitioner has not come before this Court with clean hands and suppressed material facts.

Therefore, the Petitioner is not entitled to the reliefs sought in prayer (b) to (d) of the Petition. Hence, I dismiss the Writ Application. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J.

I agree.

JUDGE OF THE COURT OF APPEAL