

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

1. M. H. M. Faizal,
No.18/2/5,
Charliman Road,
Colombo 06.

2. M. F. M. Fazil,
No.18/2/5,
Charliman Road,
Colombo 06.

Petitioners

CASE NO: CA/WRIT/261/2017

Vs.

1. I. M. U. K. Kumara,
Resident Project Manager,
Mahaweli Authority of Sri Lanka,
Victoria Project Office,
Nilagama, Digana,
Rajawella.

2. D. A. Asantha Gunasekera,
Director (Lands),
Mahaweli Authority of Sri Lanka,
No.500, T. B. Jaya Mawatha,
Colombo 10.

3. Anura Dissanayake,
Director General,
Mahaweli Authority of Sri Lanka,
No.500,
T. B. Jaya Mawatha,
Colombo 10.
4. Mahaweli Authority of Sri Lanka,
No.500,
T. B. Jaya Mawatha,
Colombo 10.
5. Rathmalge,
Land Officer,
Resident Project Manager Office,
Mahaweli Authority of Sri Lanka,
Victoria Project Office,
Nilagama,
Digana,
Rajawella.
6. M. K. G. Amarasiri,
Former Deputy Resident Project
Manager – Victoria Project,
No.500,
T. B. Jaya Mawatha,
Colombo 10.
7. M. M. F. Rizwana,
No.39/2,
Gonawala Road,
Digana,
Rajawella.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Shantha Jayawardena for the Petitioners.
Suranga Wimalasena, S.S.C., with Indumini
Randeny, S.C., for the 1st-6th Respondents.
Kamran Aziz for the 7th Respondent.

Argued on: 14.07.2020

Decided on: 06.08.2020

Mahinda Samayawardhena, J.

The land in issue was given to a person by the name of Wanigasekera on an annual permit marked R1, under the State Lands Ordinance. Wanigasekera sold the land to the 7th Respondent in violation of condition No.6 of R1. The sale took place prior to the marriage of the 7th Respondent (wife) to the 1st Petitioner (husband). Such alienations are void in terms of section 19 of the said Ordinance. Therefore, the permit R1 was cancelled by the Mahaweli Authority by R3 in terms of section 17 of the Ordinance.

It appears, after the marriage of the 1st Petitioner and 7th Respondent, a house was constructed on the land and the parties lived there as their matrimonial home. There are three children from this marriage. Due to matrimonial disputes, the parties are now living separately. The eldest son is living with the 1st Petitioner in the aforementioned house and the other two children are living with the 7th Respondent in her parental house.

It is the position of the 1st Petitioner that it is he who expended money to buy the land and also construct the house thereon. The 7th Respondent disputes this claim. Although not conclusive, it appears the land had been bought by the 7th Respondent and the house was constructed by the 1st Petitioner – *vide* P27.

Once the original permit issued to Wanigasekera was cancelled, the property reverted to the State.

Thereafter, both the 1st Petitioner and the 7th Respondent appear to have made representations separately to the Mahaweli Authority to have a permit or long-term lease in respect of the land issued in their favour.

An inquiry in this regard was admittedly held by the 6th Respondent on 02.06.2016 with the participation of both parties. The outcome of the inquiry and the recommendation thereon sent to the 2nd Respondent is marked P27. The said recommendation is not to issue the permit in the name of either of the parties but to issue a long-term lease in the name of the eldest son, the 2nd Petitioner. The reason given for this recommendation is, in my view, acceptable: i.e. in the event the permit is issued in the name of either the husband or wife, there is a likelihood of alienation of the land due to matrimonial disputes. The formal recommendation on P27 was made by the 2nd Respondent by P14.

The complaint of the 1st Petitioner is, subsequent to the said inquiry and the formal recommendation whereby it was decided to take steps to give the land on long-term lease to the 2nd Petitioner, the 1st Petitioner was called for a second inquiry on

short notice on 30.11.2016. Although the 7th Respondent did not participate at the second inquiry, the 1st Petitioner says the 5th Respondent, who conducted the inquiry, was biased in favour of the 7th Respondent and expressly stated the 7th Respondent is entitled to the land.

The 1st Petitioner protested against the second inquiry on the same day by P16.

The 1st and 2nd Petitioners have filed this application on the basis of a legitimate expectation created by P14, predominantly seeking a writ of prohibition preventing the 1st-6th Respondents from conducting further inquiries and a writ of mandamus directing the said Respondents to act in terms of P14.

In the statement of objections filed by the 1st-6th Respondents dated 05.07.2018, the said Respondents do not give any reasons for holding the second inquiry.

But, in the written submissions, the said Respondents state, after issuance of P14, the 7th Respondent again requested the permit not be issued in the name of the 2nd Petitioner but in her name – *vide* 7R2. It is on this basis the decision to hold the second inquiry was made. However, the 2nd Respondent did not participate at the second inquiry. Hence the matter shall end here.

The Petitioners' entire case is based on the legitimate expectation made out by P14. Learned Counsel for the Petitioners draws the attention of the Court to Clive Lewis' *Judicial Remedies in Public Law* (4th Edition) at page 157, where the learned author says "*In public law field, individuals may not have strictly enforceable rights but they may have legitimate*

expectations. Such expectations may stem either from a promise or a representation made by a public body.” This passage was quoted with approval in *Multinational Property Development Ltd v. Urban Development Authority* [1996] 2 Sri LR 51.

I am in agreement with the submission of learned Counsel for the Petitioners that the Petitioners shall succeed in this application on the legitimate expectation held out to them by the Respondents in issuing P14.

What is legitimate expectation? As this Court remarked in *Junaideen Mohamed Iqbal v. The Divisional Secretary, Kundasale*,¹ simply put, 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.

Wade discusses legitimate expectation in the context of *inter alia* ‘legal certainty’, “*i.e. that the individual ought to be able to plan his or her action on the basis that the expectation will be fulfilled*”.²

Wade goes on to state:

A further and more satisfactory reason for the protection of legitimate expectations lies in the trust that has been reposed by the citizen in what he has been told or led to

¹ CA/WRIT/328/2015, CA minutes of 19.02.2020.

² H.W.R. Wade and C.F. Forsyth, *Administrative Law*, 11th Edition, p.451.

*believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and government becomes a choice between chaos and coercion.*³

Our Courts have recognised and upheld this fundamental principle of law over the years. (*Vide Perera v. National Police Commission*,⁴ *Perera v. Building Materials Corporation Ltd*,⁵ *Kurukulasooriya v. Edirisinghe*,⁶ *Ariyaratne v. Illangakoon*.⁷)

The issuance of P14 and P27, followed by a second inquiry without good reason and an attempt to vary the decision previously made, entitles the Petitioners to the relief sought on the basis of legitimate expectation.

At the argument, learned State Counsel appearing for the 1st-6th Respondents informed the Court that the amicable settlement suggested to divide the land among all three children was unsuccessful, as division to three lots of this small extent of land is against the rules of the local authority. This means the permit or long-term lease shall be issued in the name of one person.

Taking all the circumstances into account, I grant the reliefs to the Petitioners as prayed for in paragraphs (c) and (g) of the prayer to the petition. No costs.

³ *Ibid.*

⁴ [2007] BLR 14.

⁵ [2007] BLR 59.

⁶ [2012] BLR 66.

⁷ SC FR Application No. 444/2012, SCM of 30.07.2019.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal