

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

In the matter of an application for the issue of a Writ of Certiorari.

1. S. S. A. U. S. A. C. Udayar
No. G 13, Getaberiya, Aranayaka.

2. S. S. A. U. S. Razik Udayar
No. G 13, Getaberiya, Aranayaka.

Petitioners

Case No: C. A. (Writ) 117/2015

Vs.

1. Mohamed Subir Mohamed Kiyas Marikkar
No. 325, Dippitiya, Aranayaka.

2. People's Bank
No. 75, Sri Chittampalam A. Gardnier Mawatha,
Colombo 02.

3. Inquiring Officer/Senior Legal Officer
Land Redemption Department,
People's Bank,
No. 220, Deans Road, Colombo 10.

4. Hon. Attorney General
Attorney General's Department, Colombo 12.

5. Hon. Mangala Samaraweera
Minister of Finance,
Lotus Road, Colombo 01.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Mahanama De Silva with N. Senanayake for the Petitioner

M.N.M. Hafeel for the 1st Respondent

Kushan De Alwis P.C. with Prasanna De Silva for the 2nd and 3rd Respondents

Susantha Balapatabendi ASG PC for 4th and 5th Respondents

Argued On: 08.05.2019

Written Submissions Filed On:

Petitioner on 13.02.2019 and 03.07.2019

1st Respondent on 16.07.2018 and 14.06.2019

2nd and 3rd Respondents on 31.07.2018 and 13.06.2019

4th and 5th Respondents on 18.10.2018

Decided On: 22.06.2020

Janak De Silva J.

The 1st Respondent made an application to the Land Redemption Department of the 2nd Respondent under and in terms of the provisions of the Finance Act No. 11 of 1963 as amended (Finance Act) for the redemption of the land described therein as Mahalindawatte.

The 3rd Respondent was appointed by the 2nd Respondent to conduct an inquiry into the said application. The inquiry was conducted with the participation of the Petitioners and the 1st Respondent. At the conclusion of the inquiry the 3rd Respondent made a recommendation (Y4) to the Board of Directors of the 2nd Respondent that the land forming the subject matter of this application be acquired in terms of the Finance Act.

This recommendation was submitted to the Board of Directors of the 2nd Respondent on 30.04.2013 which was approved on or about 22.05.2013. Later the determination of Board of Directors was notified to the Minister who made order published in the Gazette dated 17.12.2014 bearing no. 1893/14 vesting the property in the 2nd Respondent. Thereafter, the Petitioners have made this application seeking inter alia a quashing of the order made by the Minister marked B11(a) with the petition.

Initially the Petitioner filed application bearing no. 106/2012 where they sought a quashing of the recommendation made by the 3rd Respondent (Y4). While that case was pending, upon permission granted by Court further steps on the recommendation made by the 3rd Respondent was allowed. It is consequent to that the approval of the Board of Directors was granted and the order thereon was made by the Minister.

The Respondents in this application raised several preliminary objections one of which is that this application is futile since the Petitioners have not sought any relief against the determination of the Board of Directors of the 2nd Respondent that the premises be acquired. Hence it was submitted that the application is futile.

The learned President's Counsel for the 2nd and 3rd Respondents cited *Sideek v. Jacolyn Seneviratne and Others* [(1984) 1 Sri.L.R. 83] where the petitioner sought to quash two subsequent orders of the Rent Board without quashing the first erroneous order of the Rent Board and Soza J. held inter alia that the writ of certiorari will not issue where it would be vexatious or futile.

A similar approach was adopted in *Ratnasiri and Others v. Ellawalla and Others* [(2004) 2 Sri.L.R. 180] where the petitioner sought to quash the decision of the Transfer Appeal Board (1st to 3rd Respondents) but failed to challenge the decision of the Secretary, Ministry of Tertiary Education (4th Respondent) who recommended the names to the Public Service Commission. Court held that it is futile to issue a writ, since what is sought to be quashed therein is the decision said to have been made by the Transfer Appeal Board. However, the 4th Respondent to whom the power of transfer was delegated by the P.S.C. had approved and adopted the decision of the Transfer Appeal Board. No relief was sought against that decision and therefore it was held that it would be futile to grant the reliefs prayed for since it would still leave intact the decision of the 4th Respondent.

There is much force in this submission and I hold that that this application is futile as the Petitioners have failed to challenge the determination made by the Board of Directors of the 2nd Respondent.

There is a further matter that was raised in that it was submitted that the members of the Board of Directors of the 2nd Respondent were not made parties to this application and as such it must be dismissed for want of necessary parties.

The first rule regarding necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. If it is a body of persons whose decision or exercise of power is sought to be quashed, each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made respondent. The failure to make him or them respondents to the application is fatal and provides in itself a ground for the dismissal of

the application in limine [Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267].

The second rule is that all parties who would be affected by the outcome of the writ application should be made respondents to the application [Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* (supra)].

Since the Board of Directors determined that the premises should be acquired in terms of powers vested in them, they should have been made parties to this application [*Rican Lanka (Pvt) Ltd., v. People's Bank* (C.A. 1942/2002, C.A.M. 03.03.2004)].

For all the foregoing reasons, I uphold the preliminary objections and dismiss the application without costs.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal