

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

Case No.CA/WRIT/357/2016

In the matter of an application for Writs of **Certiorari, Quo Warranto, Mandamus** and **Prohibition** under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Bope Arachchige Mala Malkanthi Lokuwithana
(nee) Jayawardane),
No.66/6, Ananda Kumaraswamy Mawatha
Colombo 3.

Petitioner

- Vs. -

1. M.P.Abeyrathne
Divisional Secretary
Madurawala - Anguruwathota
- 1A. Deesha Jayasinghe
Correctly
Disna Jayasingha
Divisional Secretary
Madurawala – Anguruwathota.
2. Madurawala Pradeshiya Sabha
Madurawala.
3. Secretary
Madurawala Pradeshiya
Sabha Madurawala.
4. U.D.C. Jayalal
District Secretary – Kalutara
District Secretariat
Galle Road
Kalutara.
5. Faiszer Musthapha
Hon. Minister of Provincial Councils and
Local Government
No.330, Dr. Colvin R. de Silva Mawatha
(Union Place)
Colombo 2.

6. H.T. Kamal Pathmasiri
Secretary
Ministry of Provincial Councils and Local Government
No.330, Dr. Colvin R. de Silva Mawatha
(Union Place)
Colombo 2.
7. Isuru Devapriya
Chief Minister and Minister of Local Government – Western Provincial Council
“Shrawasthi Manadiraya”
No.32, Sir Marcus Fernando Mawatha
Colombo 7.
8. M.A.B.D.Senarath
Chief Secretary – Western Provincial Council
“Shrawasthi Manadiraya”
No.32, Sir Marcus Fernando Mawatha
Colombo 7.

Respondents

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Thishya Weragoda and Prathap Welikumbura for the Petitioner
Maithree Amarasinghe SC for the 1st & 4th – 9th Respondents
Rohana Deshapriya for 2nd & 3rd Respondents.

Written Submissions: By the Petitioner filed on 17.09.2019
By the 2nd & 3rd Respondents filed on 16.09.2019
By the 1st Respondent filed on 27.09.2019.

Argued on: 08/08/2019

Judgment on: 18/11/2020

N. Bandula Karunarathna J.

The Petitioner in this case preferred an application for Writs of *Certiorari*, *Quo Warranto*, *Mandamus* and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Respondents abovenamed seeking several reliefs by way of Writs inter alia that,

- i. Writ of certiorari quashing the decisions contained in the documents produced marked P-2(c) and P-3.
- ii. Issue a Writ of Quo Warranto against the 1st Respondent to 3rd Respondent and against the 1st Respondent to acquire and construct or develop a road way over the allotment of land depicted in the Survey Plan marked as P-1 (B)
- iii. Issue a Writ of prohibition preventing any one or more of the 1st to 3rd Respondents from acquiring and construct or develop a road way other than the manner provided by law.
- iv. Issue a Writ of Mandamus compelling the 1st Respondent to 3rd Respondent and against the 1st Respondent not to acquire or construct and develop a road way over the allotment of land depicted in the Survey Plan marked as P-1(B) other than the manner provided by law.

The Petitioner states that, the Petitioner is the lawful owner of the allotment of land called "Remuna Estate". The Petitioner submits that, by virtue of Deed marked as "P1(a)" the Petitioner become the lawful owner of the said "Remuna Estate" which is an allotment of land containing two lots, which Lot 1 to the extent of 12 acres and 2 roods(12A:2R:0P) and Lot 2 to the extent of 37 acres 2 roods and 20 perches (37A:2R:20P) as depicted in the Survey Plan marked as "P1(b)".

The Petitioner states that, the root of the title to the aforesaid land was derived as, the said land was conveyed to P. Dharmasena by the Land Reform Commission by the Deed marked as "P1(c)". The said P. Dharmasena gifted the above said land to his wife M. Dharmasena by Deed marked as "P1(d)" thereafter, the said land was transferred to the Petitioner by Deed marked as "P1(a)".

The Petitioner states that, on or about 6th of October 2016, several individuals entered the "Remuna Estate" without any approval or authorization and started to damage the aforesaid estate and started to piling up stones and sand. When questioned regarding their activities they had stated that they were going to repair the estate road running through "Remuna Estate" owned by the Petitioner.

The Petitioner submits that, when the Petitioner inquired from the person who entered the Backhoe to the estate under whose authority he was acting, the person who was so questioned had informed the Petitioner that he was acting under the instructions of the 1st Respondent (Divisional Secretary). The Petitioner submits that, due to the objection of the Petitioner the above said persons left the estate without causing further damaging to the estate.

The Petitioner submits that, after the incident the Petitioner lodged a complaint at the Anuguruwathota Police Station regarding the incident.

The Petitioner submits that, thereafter, the 1st Respondent handed over the Petitioner, page of a Government gazette dated 3rd of July 2009, and copy of a letter dated 7th of June 2013 which written to the 1st Respondent by the Chairman of the 2nd Respondent Pradeshiya Sabha, inter alia allegedly claiming that an access road of the said "Remuna Estate" had been acquired by the 2nd Respondent.

The Petitioner submits that, the above said "Local Government Notification" contained purported notice published by the then Chairman of the 2nd Respondent Pradeshiya Sabha inter alia claiming that the 2nd Respondent has properly resolved in terms of Section 24 of the Pradeshiya Sabha's Act to acquire and maintain several roads including the so called "Remuna Estate Janapadha Road" which by the purported landmarks provided in the said Gazette lies within the Petitioner's "Remuna Estate".

Individuals had entered the "Remuna Estate" of the Petitioner and commenced to pave the estate roads with crushed metal and flattened the same with a Heavy Road Roller. In the circumstances, the Estate Manager of the Petitioner proceeded to lodge a further complaint to the Police. The Petitioner states that, to the best of the Petitioner's knowledge, the Minister of Local Government has not as of date published any directive allowing any "further period" as contemplated in Section 24 of the Pradeshiya Sabhas Act to demarcate such roads.

The Petitioner further states that, however, as ex facie evident from the said gazette notification produced marked "P3", the said notification has been published in 2009, well after the Pradeshiya Sabha Act coming into operation. The Petitioner states that, as of the date of publication of the said Gazette notification marked "P3" of the 2nd Respondent and its then Chairman had no power in terms of the Pradeshiya Sabha Act to demarcate or acquire any road through the said "Remuna Estate".

Therefore the Petitioner reiterates that, the 1st and 2nd Respondents or anyone purportedly acting in terms of provisions of the said Pradeshiya Sabha Act or thereunder has acted *ultra vires* on their powers vested under the Pradeshiya Sabhas Act in the publication of the said purported Gazette notification marked "P3".

As the Respondents failed to follow Section 24 of the Pradeshiya Sabhas Act, the Petitioner concedes that, therefore, the Gazette marked as "P3" null and void *ab initio*. The Petitioner states that, therefore, all the actions taken by the Respondents in regard "Remuna Estate" were arbitrary, illegal and *ultra vires* and that the Respondents action falls under procedural impropriety and no validity in law.

The 2nd and 3rd Respondents further submitted in the Statement of Objections inter alia that;

- i. The 2nd and 3rd Respondents are aware only that there is a road way duly acquired over the said land.

- ii. The 2nd and 3rd reiterate that the said road way was acquired under and in terms of Section 24(2) of the Pradeshiya Sabha Act and all procedure under the said act was followed prior to the said acquisition.
- iii. The said acquisition was done in year 2009 and the Petitioner cannot maintain the position that he was unaware of the said gazette once it was published.
- iv. There is no requirement to take steps under the Land Acquisition Act.
- v. The Petitioner misrepresented the material facts and circumstances in obtaining the said interim relief and more prejudice is caused to the public who make use of the said road way for a long period of time as depicted in Preliminary Plan No-K-1518 dated 19th July 1977 annexed as 2R-2 as part and parcel of the Statement of Objections.
- vi. The said Gazette is published and boundaries were properly demarcated and the Petitioner had been given an opportunity to raise any objections within the time and the Petitioner failed to do so, therefore no writ remedies would be amenable eight years after the said Gazette.
- vii. The document marked as 2R-2, it is clear that the said road is referred to as the VC road which has been used as a road for a longer period of time and the same can be used as a road without further acquisition.
- viii. The Petitioner has not submitted the necessary requirements of Writ of Certiorari, Mandamus and Quo Warranto as required by law.

In Haniffa v. Chairman Urban Council Nawalapitiya 66 NLR 48, Thambiah J, held that a mandamus can only issue against a natural person, who holds a Public Office.

Biso Menika V. Cyril de Alwis and Others (1982) 1 Sri LR 368 Sharvananda CJ observed.

"the proposition that the application for Writ must be sought as soon as injury is caused, is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ Application dwindle and the Court may reject a Writ Application on the ground of unexplained delay.

It is my view that in addition to the above, the 3rd Respondent is not a natural or juristic person who is made a party to this application who is not named under the personal name. Moreover, the Petitioner's Application does not come within the ambit of Writ of Quo Warranto.

The 2nd and 3rd respondents reiterate that the said road way was acquired under and in terms of Section 24(2) of the Pradeshiya Sabha Act and all procedure under the said act was followed prior to the said acquisition. The said acquisition was done in year 2009 and the Petitioner cannot maintain the position that he was unaware of the said gazette once it was published and there is no requirement to take steps under the Land Acquisition Act.

The 1st Respondent states that the entire extent of the land referred to as "RemunaWatte" situated in the Kalutara District was 87 acres: 0 roods and 0.07 perches prior to land reforms introduced by Land Reform Commission Law No.1 of 1972. Subsequently, upon the introduction of ceiling of maximum extent of agricultural land which may be held, the said

land was declared as vested in the Land Reform Commission. The entire extent of the land which was vested under the Land Reform Commission has been depicted under P. Plan No.1519.

The 1st Respondent also states that the Petitioner's rights are limited to the portion of the land from the entire extent of land which constitutes "Remunwatte" Estate in as much as the rights attached to the portion of the estate transferred to her, under the deeds and incidental plans marked as P1a and P1b to the Petition. In any event the road way which is the subject of this action does not form part of the land transferred to the Petitioner by the said Deeds and Plans. Instead the said documents themselves amply prove that the said roadway from the Southern Boundary of Lot 1 in Deed 2803 and Northern Boundary of Lot 2 in the same Deed supported by Plan No. P1 (b).

The Respondents therefore state that the remaining portion of land which does not belongs to the Petitioner, being approximately 37 Acres in extent has been distributed under a village expansion scheme among destitute families left homeless by natural disasters which took place in the area. This settlement is commonly known as "Akkara 90 Janapadaya." The subject road way which leads to the Remuna Village or "RemunaGammanaya" from the Horana – Kalutara main road is used by the villagers of the Remuna Village, Akkara 90 Janapadaya and the residents of the area as a Public access way for over 50 years. The said Respondent further states that there are about 85 families living in the Akkara 90 Janapadaya.

The said roadway is the only access between the Horana – Kalutara main road and the "Akkara 90 Janapadaya" as well as Remunawatte Village. Development of this road way was identified as one of the foremost development projects under the 2016 Development of Rural Facilities Programme spearheaded by the Ministry of National Planning and Economic Development. A sum of Rs. One Million was allocated for the project.

Subsequent to a thorough analysis of the facts of the case, I believe that it is pertinent to note that the development of the roadway depicted as Gamsabaha road was under way upon the time this matter was supported for Notice before this court and that upon the issuing of the said Interim Order, the Development process came to an immediate stop. Therefore, the raw material brought to the site was left to waste on site and the roadway which has been partially constructed with crushed metal strewn halfway has made access along the road hazardous and unusable. Pertaining to the aforesaid, (as pointed out by the 1st Respondent), the villagers of the area have also faced hardship.

I further believe that once the impugned Gazette is published, and boundaries were properly demarcated, the Petitioner had been afforded an opportunity to raise any objections within the time and the Petitioner failed to do so, therefore no writ remedies would be amenable eight years subsequent to the said Gazette.

The document marked as 2R-2, it is clear that the said road is referred to as the VC road which have been used as a road for a longer period of time and the same can be used as a road without further acquisition and no prejudice is caused to the Petitioner as it is depicted as a public road used for a long period of time. As the 2nd and 3rd Respondents state, the document marked as P-2 (c) and P-3 are gazette notifications containing several notifications published by the Madurawela Pradeshiya Sabha, about road ways and the Petitioner did not specify the impugned part separately, therefore in the manner the Petitioner prayed her relief is vague and futile.

The Petitioner moved only to quash the Gazette notification but did not move to quash the resolution passed by the Pradeshiya Sabha passed on 20th February 2009, which referred in the said notification.

In the totality of the above circumstances, it is my view that the Petitioner has not submitted necessary requirements of Writ of Certiorari, Mandamus and Quo Warranto as required.

Thus, this Application is dismissed with cost.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal