

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 Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CA (Writ) Application No: 286/2014

Fathima Asan Khan,
(Nee Senadheerage Chandra Malkanthi),
A4506, Samagipura, Viharagala,
Suriyawewa.

PETITIONER

Vs.

1. Sri Lanka Mahaweli Authority,
500, T.B. Jayah Mawatha, Colombo 10.
2. Resident Project Manager.
3. Deputy Resident Project Manager.
4. Gamini, Divisional Manager.

2nd – 4th Respondents at
Office of the Divisional Manager, Suriyawewa.

5. Ms. Niluka,
Office of the Unit Manager, Baddewewa.
6. Ariyaratne,
Land Officer, Suriyawewa.
7. W. W. Sujith Prasanna,
A4506, Samagipura, Viharagala,
Suriyawewa.

RESPONDENTS

Before: Mahinda Samayawardhena, J
Arjuna Obeyesekere, J

Counsel: Chandana Wijesuriya with Sandun Dissanayake for the Petitioner

Manohara Jayasinghe, Senior State Counsel for the 1st – 6th Respondents

Shantha Jayawardena with Niranjana Arulpragasam and Kavindu Geeganage for the 7th Respondent

Argued on: 9th September 2020

Written Submissions: Tendered on behalf of the Petitioner on 7th November 2018

Tendered on behalf of the 1st – 6th Respondents on 21st August 2018

Tendered on behalf of the 7th Respondent on 20th October 2018 and 21st November 2019

Decided on: 16th November 2020

Arjuna Obeyesekere, J

This application relates to a land situated in Suriyawewa and the ensuing dispute between the Petitioner and her elder brother, the 7th Respondent to obtain a permit for the said land.

The Petitioner claims that the 1st Respondent, the Mahaweli Authority of Sri Lanka handed over the said land depicted as Lot No. 4506 in Final Plan No. 4/119 in extent of 40P, vested in the 1st Respondent, together with Lot No. 4523 to her mother, N. G. Nandawathie in 1986. This claim has been contradicted by the 1st Respondent who states that Nandawathie was in possession of the said lands much earlier, and that the said lands have not been handed over to Nandawathie in terms of the law.¹ Even though the 1st Respondent has not issued a permit in respect of the said lands to Nandawathie, there is no dispute between the parties that the said land has been occupied and developed by Nandawathie.

¹ Vide letter marked '7R11' issued by the Unit Manager of the 1st Respondent.

The Petitioner states that at the request of Nandawathie, a permit has been issued to another daughter of Nandawathie in respect of Lot No. 4523. The Petitioner states further that she lived with Nandawathie in a house built on Lot No. 4506, and that with the income she earned from her foreign employment, she built two houses on the said land.

The Petitioner states that an inquiry was held in 2003 to regularize the unauthorised possession of Nandawathie. The Petitioner states further that although a Unit Manager of the 1st Respondent had issued a letter dated 19th August 2010 marked 'P2' confirming that the Petitioner has been selected as the person in whose name a permit could be issued, so far a permit in terms of the Land Development Ordinance has not been issued to her.² Although the 1st Respondent has admitted that the Petitioner was selected to receive a permit, no explanation has been given as to why a permit was not issued in the name of the Petitioner.

The Petitioner states that the 7th Respondent had made representations to the 1st Respondent to have the selection of the Petitioner cancelled and to have the permit issued under his name. The Petitioner too had made a complaint in 2011 to the Minister in charge of the 1st Respondent about the delay in issuing her a permit. Pursuant to this, the Resident Manager, Suriyawewa of the 1st Respondent, by his letter dated 24th April 2012 marked 'P4' had informed the Petitioner that as the Petitioner has failed to come into occupation of the said land, a fresh inquiry will be held to determine entitlement to the said land based on the actual possession of the land. Although the Petitioner admits that an inquiry was held, she states that she was not informed of the outcome of the inquiry.

The 1st Respondent had thereafter issued the 7th Respondent a permit marked '7R13' in respect of half the extent of Lot No. 4506, i.e. 20 perches. Aggrieved by this decision of the 1st Respondent, the Petitioner has filed this application, seeking *inter alia* the following relief:

² 'P2' has not been issued on a letter head of the 1st Respondent, and has been issued many years after the inquiry held in 2003.

- (a) A Writ of Certiorari to quash the decision of the 1st – 5th Respondents to issue the 7th Respondent a permit under the Land Development Ordinance;
- (b) A Writ of Mandamus directing the 1st – 5th Respondents to issue a permit to the Petitioner.

Although the Petitioner claims that the decision to issue the 7th Respondent a permit is *ultra vires* the powers of the 1st Respondent, it cannot be disputed that the 1st Respondent is possessed of the power to issue a permit in respect of lands vested in it. The question that arises for determination in this application is whether the decision of the 1st Respondent to grant the 7th Respondent a permit in respect of half of the said land even though the Petitioner has been selected in 2003 to receive a permit in respect of the entirety of the land, is reasonable and rational.

Prior to determining the entitlement of the 7th Respondent, the 1st Respondent has conducted an inquiry where the statements of the Petitioner, 7th Respondent and Nandawathie had been recorded. It had transpired at the said inquiry that the Petitioner as well as the 7th Respondent were living on the said land, having built houses of their own. In fact, in her statement marked '1R6', Nandawathie had stated that the Petitioner had only built one house, and not two, as claimed by the Petitioner. The 1st Respondent had accorded due recognition to the fact that both the Petitioner and the 7th Respondent were in possession of the said land, and decided to allocate half share of the property to each of them.

In support of his entitlement, the 7th Respondent has stated that he too lived in the old house built by their mother on the said land. He states that Nandawathie informally divided the land into two 20 perch plots, and permitted the two children to build a house on the plots given to each of them. The 7th Respondent states that the Petitioner only built the house bearing assessment No. 66 and states that the house bearing assessment No. 67 was built by him. He claims that he has lived in the said house since 1998, except the periods when he was working outside Sri Lanka.

The 7th Respondent states that he was employed outside Sri Lanka during the period February 2002 – July 2004.³ It is during this period – i.e. 2003 - that an inquiry had been conducted to determine the entitlement to the said land. The 7th Respondent claims that the Petitioner had participated at the inquiry and had her name inserted as the recipient of the entire land by suppressing the fact that by then the land had been divided into two plots.

The 7th Respondent has claimed that his name has been inserted on the Electoral Register under the above address for a long period. This is disputed by the Petitioner who claims that in 2005, while she was working outside Sri Lanka, the 7th Respondent had got his name inserted on the electoral register in respect of one of the houses. However, as admitted by the Petitioner, this has been done with the consent of their mother. The Petitioner admits that the 7th Respondent had come into occupation of the said house in 2009, once again with the consent of their mother.

The Petitioner claims that she obtained electricity for both houses under her name in 2005. While no documentary proof of this fact has been presented to this Court, the 7th Respondent has stated that the connection in respect of the house bearing assessment No. 67 was obtained in the name of Nandawathie, and that the Petitioner surreptitiously had it changed to her name in 2011. The 7th Respondent states that the Ceylon Electricity Board had however inserted his name for the connection in respect of this house.⁴

Having carefully considered the above factual matters, I take the view that the decision of the 1st Respondent that the 7th Respondent is also in possession of the land is supported by the evidence that was available to the 1st Respondent. It is not a decision which is irrational or unreasonable. If I may refer to the words used by Lord Diplock to describe 'irrationality', it is not a decision *which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*⁵ Hence, I see no legal basis to grant the Writ of Certiorari prayed for by the Petitioner.

³ Vide extracts of the passport of the 7th Respondent, marked '7R1'.

⁴ Vide documents marked '7R5' – '7R9'.

⁵ Council of Civil Service Unions vs Minister for the Civil Service [(1985) AC 374]

There are two other matters that I wish to advert to.

The first is the allegation by the Petitioner that the 7th Respondent has already been given a land in Mayurapura and is therefore not eligible to receive the permit '**7R13**'. The 7th Respondent has admitted that his wife has received a permit in respect of a paddy land in extent of 2 ½ acres, but has denied that he or his wife has received a permit in respect of any high land, although they use a high land adjacent to the paddy land for their cultivation purposes. The Petitioner has however annexed to her counter affidavit a letter sent by Nandawathie who states that the wife of the 7th Respondent has been given a high land, as well. This judgment shall not prevent the 1st Respondent from inquiring into the said allegation of the Petitioner and taking appropriate steps in terms of the law.

The second matter that I wish to advert to is the admission of the 1st Respondent in its Statement of Objections that it has decided to issue the Petitioner a permit in respect of 20 perches out of Lot No. 4506 – vide '**1R7**'. The 1st Respondent shall take immediate steps to issue to the Petitioner a permit in terms of the Land Development Ordinance, in respect of the balance portion of Lot No. 4506, if that has not been done already, and provided the Petitioner is still entitled to such a permit.

Subject to the above, this application is dismissed, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal