

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

**Court of Appeal Case No.**

**CA/WRT/0641/2021**

**Kavirathne Gamage Jayatilake,**  
272/1, Mayurapura Koholankala  
Hambantota.

**Petitioner**

**Vs.**

1. **D. D. K. Gamage,**  
Commissioner of Lands Mihikatha  
Madura,  
No. 1200/6 Rajmalwatta Rd,  
Battaramulla.
2. **T. G. Sarath Kumara,**  
Southern Provincial Land Commissioner,  
Southern Provincial Land Commissioners  
Department,  
No. 211, Wakwella Road, Galle.
3. **Kaushalya Galappaththi,**  
Divisional Secretary Hambantota,  
Magampura Administrative Complex,  
Siribopura,  
Hambantota.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Dulindra Weerasooriya, P.C. with Pasan Malinda for the Petitioner  
Avanthi Weerakoon, S.C. for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

Argued on: Disposed by way of Written Submissions

Written Submissions on: 26.07.2024 by the Petitioner  
19.07.2024 by the Respondent

Decided on: 18.09.2024

**MOHAMMED LAFFAR, J.**

By virtue of the Permit marked as **P1**, issued in terms of the provisions of the Land Development Ordinance No. 19 of 1935 (as amended), the Petitioner has been in possession of the land in dispute. By letter dated 14-09-2016, the 3<sup>rd</sup> Respondent, Divisional Secretary of Hambantota granted permission to the Petitioner to construct a permanent building on the said land (**P3**). By letter dated 06-09-2019 (**P4**), the 3<sup>rd</sup> Respondent informed the OIC of the Police Station, Hambantota to take steps to prevent the Petitioner from constructing a parapet wall along the northern boundary of the said land until the disputed boundary is identified. The Petitioner states that in terms of the title plan made by the Surveyor General marked as **P5**, the boundaries of the land in suit are specified and there is no encroachment by the Petitioner. Thereafter, under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended), the 3<sup>rd</sup> Respondent issued a Quit Notice to the Petitioner ordering him to hand over vacant possession of the land in dispute to the 3<sup>rd</sup> Respondent (**P6**). The Petitioner states that the issuance of the Quit Notice was actuated by malice and motivated by a revengeful intent towards the Petitioner, who remains in lawful occupation of the state land under a valid permit. The 3<sup>rd</sup> Respondent, by letter dated 04-03-2020 (**P7**), issued a notice under section 106 of the Land Development Ordinance to the Petitioner to revoke the said Permit on the basis that the latter had violated the conditions stipulated therein (**P7a**). Thereupon, the Petitioner informed the 3<sup>rd</sup> Respondent that he had not violated the conditions set out in **P1**. By letter dated 25-09-2020, the 3<sup>rd</sup> Respondent informed the Petitioner that the said Permit has been canceled (**P8 and P8a**). Subsequently, the Petitioner preferred appeals to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (Commissioner of Lands-Battaramulla and Southern Provincial Land Commissioner) with regard to the cancellation of his permit (**P10 and P11**). After inquiry, the 2<sup>nd</sup> Respondent

by letter dated 21-10-2020 (**P13**) affirmed the decision of the 3<sup>rd</sup> Respondent pertaining to the cancellation of the permit marked **P1**. Being aggrieved by the said decision, the Petitioner by letter dated 23-10-2020 lodged an appeal before the 1<sup>st</sup> Respondent (**P14**). After inquiring, the 1<sup>st</sup> Respondent by letter dated 30-03-2021 (**P17**) informed the 3<sup>rd</sup> Respondent that the cancellation of the said Permit is erroneous and directed her to issue a new Permit to the Petitioner under section 20A of the Land Development Ordinance (**P17**) within one month. By letter dated 09-08-2021 (**P18**), the 1<sup>st</sup> Respondent directed the 3<sup>rd</sup> Respondent not to proceed with the Quit Notice marked as **P6**. Thereafter, at the request of the 1<sup>st</sup> Respondent, a fresh plan was made by the Government Surveyor on 13-08-2021 (**P20**). The 1<sup>st</sup> Respondent being satisfied with the facts that the Petitioner has developed the land which is described in **P1**, by letter dated 21-09-2021 (**P21**), directed the 3<sup>rd</sup> Respondent to issue a long-term lease of 1 Rood and 31.8 Perches of land which the Petitioner had developed in addition to the land described in **P1**.

Though the 1<sup>st</sup> Respondent directed the 3<sup>rd</sup> Respondent not to take steps under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended), the 3<sup>rd</sup> Respondent instituted action in the Magistrate's Court of Hambantota in case No. 59922 against the Petitioner (**P23**). On 25-11-2021, the learned Magistrate of Hambantota made an Order to evict the Petitioner from the land in dispute. The Petitioner states that at the time of issuing the Quit Notice marked as **P6** he was in possession of the said land by virtue of a valid permit marked as **P1**, and therefore, instituting the said action upon the said Quit Notice is bad in law. Moreover, the 3<sup>rd</sup> Respondent has a statutory duty to carry out the directions of the 1<sup>st</sup> Respondent. In those circumstances, the Petitioner seeks, *inter alia*, that;

1. A Writ of Prohibition, prohibiting any further proceedings or any other steps including the enforcement of the Order of the Learned Magistrate dated 25-11-2021 in case No. 59922, a declaration that the Permit marked P1 is a valid document, a declaration that the decision of the 3<sup>rd</sup> Respondent (P8A) canceling the said permit is null and void in law.
2. A Writ of *Certiorari* quashing the decision contained in P8A and a Writ of Mandamus directing the 3<sup>rd</sup> Respondent to issue a permit to the Petitioner as directed by the 1<sup>st</sup> Respondent and grant a long-term lease as contained in P21.

It is pertinent to note that the Quit Notice marked as **P6** was issued by the 3<sup>rd</sup> Respondent on 19-09-2019 and the permit marked as **P1** was cancelled on 25-09-2020 (P8A). As such, it is abundantly clear that at the time of issuing the Quit Notice, the Petitioner was in possession of the subject matter upon a valid permit issued by the State in terms of the provisions of the Land Development Ordinance. In those circumstances, it appears to this Court that the said Quit Notice and the subsequent proceedings instituted in the Magistrate's Court of Hambantota upon the said Quit Notice are bad in law.

Moreover, it is to be noted that in terms of Section 4 of the Land Development Ordinance, the 3<sup>rd</sup> Respondent is statutorily duty bound to adhere to the directions given by the 1<sup>st</sup> Respondent, which reads thus'

*“The Land Commissioner may from time to time give general or special directions to a Government Agent or to a land officer as to the performance of his duties relating to land administration and may direct or authorize any question of doubt or difficulty in connexion with such duties to be referred to the Land Commissioner for decision. Any direction or decision of the Land Commissioner shall be observed and given effect to by the Government Agent or by the Land Officer as the case may be.”*

It is significant to note that the 1<sup>st</sup> Respondent by letter dated 30-03-2021 **(P17)** informed the 3<sup>rd</sup> Respondent that the cancellation of the said Permit is erroneous and directed her to issue a new Permit to the Petitioner under Section 20A of the Land Development Ordinance **(P17)** within one month. By letter dated 09-08-2021 **(P18)**, the 1<sup>st</sup> Respondent directed the 3<sup>rd</sup> Respondent not to proceed with the Quit Notice marked as **P6**. However, the 3<sup>rd</sup> Respondent without any basis totally failed to adhere to the said directions given by the 1<sup>st</sup> Respondent which is *ultra-vires*, capricious, illegal, arbitrary, bad in law and contrary to section 4 of the said Ordinance. This Court is mindful of the fact that the 3<sup>rd</sup> Respondent has not tendered objections and affidavit against the Petition of the Petitioner. Having scrutinized the facts and circumstances of this Application it appears to this Court that the 3<sup>rd</sup> Respondent has acted in bad faith under the said law.

For the foregoing reasons, I hold that the Petitioner is entitled to the reliefs as prayed for in the prayers to the Petition. The Petitioner is entitled to a sum of Rs. 40,000/- as costs of this Application payable by the 3<sup>rd</sup> Respondent in her personal capacity from her personal funds.

*Application allowed with costs.*

**JUDGE OF THE COURT OF APPEAL**