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

In the matter of an Application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition.

CA (Writ) Application No: 118/2015

Alagurani Amirthalingam,

Appearing by her lawfully appointed Attorney, Ganeshapillai Leelawathy
Both at Kanakarayankulam North,
Kanakarayankulam, Vavuniya.

PETITIONER

Vs.

1. K. Paranthaman
   Divisional Secretary of Vavuniya North,
   Divisional Secretariat – Vavuniya North,
   Vavuniya North, Vavuniya

2. R.P.R. Rajapaksa,
   Land Commissioner-General,
   Land Commissioner General's Department,
   Battaramulla

3. Provincial Land Commissioner,
   (Northern Province),
   Department of Land Administration,
   No. 295, Kandy Road, Ariyalai, Jaffna.

RESPONDENTS

Before:	**Mahinda Samayawardhena, J** **Arjuna Obeyesekere, J**
Counsel:	Nilshantha Sirimanne with Ms. Minuri Dissanayake for the Petitioners Dr. Charuka Ekanayake, State Counsel for the Respondents
Argued on:	29th June 2020
Written Submissions:	Tendered on behalf of the Petitioners on 27th January 2020 Tendered on behalf of the Respondents on 19th June 2020
Decided on:	7th August 2020

Arjuna Obeyesekere, J

The issue that arises for the determination of this Court is whether the Respondents have followed the procedure laid down in the Land Development Ordinance (the Ordinance) when cancelling the permit issued to the Petitioner.

The facts of this matter very briefly are as follows.

In April 1997, the State had issued the brother-in-law of the Petitioner, A. Ganeshapillai a permit marked '**P2**' under the provisions of the Ordinance in respect of a land in extent of 1A situated in the Divisional Secretariat area of Vavuniya North. The said permit had subsequently been re-issued in the name of the Petitioner. The Petitioner states that due to the escalation of the conflict between the Government and the LTTE terrorists in 1999, the lands

surrounding the above land had been taken over by the Security Forces, with the result that the Petitioner could not enter the land. The Petitioner had been permitted to return to the area where the said land was situated only in July 2010. As the land allocated to the Petitioner by the said permit '**P2**' continued to be used for security purposes by the Security Forces, the Petitioner had requested that an alternate land be allocated to her.

The Petitioner states that as she had no other land, in December 2010 she had occupied an uninhabited land situated approximately 3km from the land referred to in '**P2**'. Having constructed a house on the said land, the Petitioner claims that she cultivated the land with short term and long term crops. It is not in dispute that the occupation of the second land was *reguralised* by the Respondents and that the necessary amendments to '**P2**' including the description of the land and its boundaries were effected on '**P2**'.

The Petitioner states that in May 2013, her occupation of the said land had been interrupted by third parties, at the instigation of a Coordinating Secretary of a Minister. Upon a complaint made by Ganeshapillai Leelawathie, the sister-in-law of the Petitioner, the Kanagarayankulam Police, having conducted an investigation, had filed a 'B' report in the Magistrate's Court of Vavuniya in September 2013, in respect of the said incidents.

The Petitioner states that soon after the said incident, she received the following letter dated 17th June 2013 marked '**P9**' from the 1st Respondent:

> "*Reference to the above, while Army camp was erected on the land bearing permit No. VN/225A/ER/LDO/22 situated at Periyakulam village, Kanakayankulam North Grama Sevaka division, you have encroached another land along the A9 road. The Rural Development Society has*

complained that the said land was allocated for public use. I respectfully request you not to carry out any development work in this land till an answer in respect of this land is found."

The 1st Respondent had thereafter issued to the Petitioner the following letter dated 9th July 2013 marked '**P10**':

"*Ref. to the above, while Army camp was erected on the land containing in extent 2 acres and bearing permit No. VN/225/A/ER/LDO/22, situated at Periyakulam Village, Kanakayankulam North Grama Sevaka Division, another land bounded (by the) milk collecting centre, health centre, preschool and near Jaffna–Kandy Road was encroached. Further, Rural Development Society has requested to release the said land for public use of the Society and to evict you from the said land. On the telephone conversation with Mr. Muththu Mohamed Master, Coordinator to the Hon. Rishad Bathiuththeen, Hon. Minister of Industry & Commerce and President, Development Committee, Vavuniya District, on 12.06.2013 'it was instructed to give the said land to the Rural Development Society for use it for public purpose'. According to the above instruction and considering the public welfare you are sincerely requested to leave the said land without causing hindrance to the peace and I further inform you that a suitable land will be given to you at another location in compliance with Circular No. 2013/01, issued by the Commissioner General of Lands.*"

'**P10**' had been followed by a further letter dated 18th July 2013 marked '**P11**' sent by the 1st Respondent to the Human Rights Commission, where it was admitted that the description of the land on the permit '**P2**' had been amended to the land that the Petitioner had encroached, and that the 1st

Respondent does not have any objection to the said land being given to the Petitioner. However, the said letter goes onto state as follows:

> "*Mrs. Alagurani Amirthalingam has sent me an application requesting to grant the above said land to her as an alternative land since the land belonging to her was taken by the military. Accordingly, as per the letter of Hon. Deputy Minister of Resettlement No. VN/MR/DS/ 2012 dated 21.02.2012 the boundaries of encroached land were recorded and amended in the permit bearing No. VN/225/ER/LDO-22 and reissued. However, Rural Development Society, Kanakarayankulam, Senior Citizen Society, Kanakarayankulam, Women Development Society, Kanakarayankulam and Farmers' Movement, Kanakarayankulam have said that the said land was allocated for public use and requested to release it.*
>
> *Further, Livestock Cooperative Society (Milk Collecting Centre), Kanakarayankulam have made a request stating that they need an additional land to extend their development work.*"

The above position had been reiterated by the 1st Respondent in a further letter dated 21st August 2013, marked '**P13**'. It is thus clear that pressure was brought upon the Petitioner to vacate the said land, although by then, the Government had issued the Petitioner with a permit in respect of the said land. The undue influence exerted on the Petitioner continued with the 1st Respondent informing the Petitioner that steps will be taken under the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, to evict the Petitioner from the said land.

The issue that culminated in this application started in January 2014 when the 1st Respondent, by notice dated 22nd January 2014 marked '**P19**', issued in terms of Section 106 of the Ordinance, directed the Petitioner to show cause on or before 26th February 2014 why the permit should not be cancelled. It is noted that the grounds on which the said permit could be cancelled have been set out in the Schedule to the Permit '**P2**', and includes cancellation as a result of violating and/or failing to observe any conditions of the permit. The Petitioner has also stated that annexed to '**P19**' was a blank form titled, 'Order Cancelling Permit', which is issued under Section 109 of the Land Development Ordinance, even though such an order had not been made by then.

Even though the Petitioner by her letter dated 1st February 2014 marked '**P22a**' had appealed to the 1st Respondent to withdraw '**P19**' for the reasons set out therein, the Petitioner had not presented herself before the Inquiry scheduled for 26th February 2014. The Petitioner however claims that she submitted a medical certificate, seeking to excuse herself from the inquiry. The receipt of the medical certificate has not been denied by the Respondents, even though the learned State Counsel did challenge the authenticity and genuineness of the said medical certificate. He submitted further that the medical certificate does not support the fact that the medical condition of the Petitioner is preventing her from attending the inquiry scheduled for 26th February 2014.

The Respondents have submitted that as the Petitioner did not present herself at the inquiry held on 26th February 2014, the 1st Respondent had cancelled the permit on 14th March 2014, by the cancellation order marked '**1R11**'. The Petitioner however states that she did not receive a notice informing her that the permit has been cancelled.

The Petitioner states that she was thereafter served with a notice issued under Section 3 of the State Lands (Recovery of Possession) Act seeking to eject her from the land. The 1st Respondent had thereafter filed action in the Magistrate's Court, Vavuniya in terms of the said Act, and an order has been made by the learned Magistrate of Vavuniya on 25th February 2015 ejecting the Petitioner from the said land.

It is in these circumstances that the Petitioner filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the notice '**P19**' issued to the Petitioner calling her to show cause why the permit '**P2**' should not be canceled;

b) A Writ of Certiorari to quash the decision of the 1st Respondent to cancel the permit '**P2**'.

The arguments of the learned Counsel for the Petitioner essentially revolve around a) the failure on the part of the Respondents to follow the procedure laid down in the Ordinance, and b) the failure by the Respondents to inform the Petitioner the reasons for the cancellation of the permit.

As observed in **De Smith's Judicial Review**[1]:

> "*Procedural justice, or procedural fairness, has to be contrasted with substantive justice. The general objective of substantive justice is to ensure that the decisions of public authorities are within the scope of the powers conferred on those authorities. Substantive justice ensures that those powers are not exceeded.* ***Procedural justice aims to provide***

[1] Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* (8th Edition, 2018) Sweet and Maxwell;Page 341.

individuals with a fair opportunity to influence the outcome of a decision and so ensure the decision's integrity."

This would be a convenient place for me to discuss the procedure set out in Chapter VIII of the Ordinance with regard to the cancellation of a permit. The first step that must be taken in terms of Chapter VIII is to act in terms of Section 106 of the Land Development Ordinance, which reads as follows:

> *"If it appears to the Government Agent that a permit-holder* ***has failed to observe a condition of the permit****, the Government Agent may issue a notice in the prescribed form intimating to such permit-holder that his permit will be cancelled unless sufficient cause to the contrary is shown to the Government Agent on a date and at a time and place specified in such notice."*

Section 107 provides that, "*The date specified in a notice issued under subsection (2) of section 106 shall not be less than forty-two days from the date of the issue of such notice on the permit-holder*."

Section 108 specifies that, "*A copy of every notice issued under section 106 shall be served on the permit-holder and a copy shall also be affixed in a conspicuous position on the land affected by such notice. The Government Agent may also cause a copy of such notice to be served on any person who, in his opinion, is interested in the land or may be affected by a cancellation of the permit.*"

The Ordinance thereafter draws a distinction between a person who fails to appear on the date specified in the notice issued under Section 106, or who having appeared does not show cause, and a person who appears on the date

specified in the notice issued under Section 106, and shows cause as to why the permit should not be cancelled.

The first situation is set out in Section 109(1), which reads as follows:

> "*If the permit-holder fails to appear on the date and at the time and place specified in a notice issued under section 106, or appears and states that he has no cause to show why his permit should not be cancelled, the Government Agent may,* ***if he is satisfied*** *that there has been due service of such notice and* ***that there has been a breach of any of the conditions of the permit, make order cancelling such permit*** *but no such order shall be made until after the expiry of a period of twenty-eight days reckoned from the date specified in the notice issued under section 106*.

However, a permit holder who does not appear on the date specified in the notice issued under Section 106 has been provided with a remedy by Section 109(2) of the Ordinance, which reads as follows:

> "*If, within a period of fourteen days reckoned from the date specified in the notice issued under section 106, the permit-holder satisfies the Government Agent that he has cause to show why his permit should not be cancelled and that he was prevented by accident, illness, misfortune or other unavoidable cause from appearing on the date and at the time and place specified in such notice, the Government Agent shall appoint another date, time and place for the purpose of enabling the permit-holder to show cause why his permit should not be cancelled*."

The reason why the decision taken in terms of Section 109(1) is not given effect for a period of 28 days appears to be to accommodate a request made by the permit holder in terms of Section 109(2).

It is noted that in terms of Section 117, "*No appeal shall lie against an order of cancellation made by the Government Agent under section 109 but such order shall be final and conclusive for all purposes*." Thus, a permit holder who does not present himself at the inquiry, and who does not thereafter take steps in terms of Section 109(2) to *purge his default* cannot avail himself of the right of appeal that is available under Section 113.

The procedure that should be followed when a permit holder appears at the time and place specified in the notice issued under Section 106 is set out in Section 110(1) of the Ordinance which reads as follows:

> "*If on the date and at the time and place specified in a notice issued under section 106 or appointed by the Government Agent under section 109 (2) the permit-holder appears and offers to show cause why his permit should not be cancelled, the Government Agent may,* ***if he is satisfied after inquiry that there has been a breach of any of the conditions*** *of the permit, make order cancelling the permit*.**"**

The manner in which evidence can be received at the inquiry that the Divisional Secretary is required to conduct is set out in Section 110(2).

Section 112(1) requires that "*A copy of an order made by a Government Agent under section 110 shall be served forthwith on the permit-holder and a copy of such order shall also be affixed forthwith in a conspicuous position on the land affected by such order. Every copy so served or affixed shall contain a statement to the effect that an appeal from such order will lie to the Land Commissioner if preferred within a period of thirty days reckoned from the date of the order and such date shall be specified in such statement*."

Section 113 of the Ordinance provides that a "*permit-holder aggrieved by an order made by the Government Agent under section 110 may appeal therefrom to the Land Commissioner*." The mode of preferring an appeal and the time period for preferring an appeal is set out in Section 114 of the Ordinance.

Section 115 of the Ordinance sets out the powers of the Land Commissioner in determining an appeal. In terms of Section 116(2) of the Ordinance, "any decision made by the Land Commissioner under section 115 **shall be final and conclusive for all purposes."**

I shall now consider each of the complaints of the learned Counsel for the Petitioner that the procedure laid down in the Ordinance has not been observed.

The first complaint is that the notice issued under Section 106 – '**P19**'- does not set out the conditions of the permit that the Petitioner has failed to observe. Given the fact that the purpose of such a notice is to enable the permit holder to show sufficient cause as to why the permit should not be cancelled, I am of the view that it is mandatory that the said notice contains details relating to the violations of the conditions of the permit. I have examined '**P19**' and observe that '**P19**' does not contain the conditions of the permit that the Petitioner had failed to observe and is a blank document. Without '**P19**' specifying the conditions of the permit that had been violated, this Court is at a loss to understand how the Divisional Secretary could have satisfied himself that there has been a breach of any of the conditions of the permit. Therefore, I am in agreement with the learned Counsel for the Petitioner that the provisions of Section 106 have not been complied with by the 1st Respondent and that '**P19**' is liable to be quashed, on this ground.

The second complaint is that '**P19**' does not comply with the provisions of Section 107. '**P19**' is dated 22nd January 2014 whereas the inquiry had been fixed for 26th February 2014. This is a clear violation of Section 107 which requires the inquiry to be conducted 42 days after the date of the notice issued under Section 106.

The third complaint of the learned Counsel for the Petitioner is that the Petitioner did write '**P22(a)**' on 1st February 2014 explaining her position, and that even though the Petitioner did not come for the inquiry on 26th February 2014, she did tender a medical certificate. It was submitted that, in these circumstances, the 1st Respondent ought to have re-fixed the inquiry as provided for in Section 109(2) unless the 1st Respondent was of the view that the medical certificate is not authentic in which event the 1st Respondent should have rejected the medical certificate and informed the Petitioner of such fact. Given the fact that the Petitioner did submit a response to '**P19**', and a medical certificate, I am of the view that the Divisional Secretary ought to have acted in terms of Section 109(2) and re-fixed the inquiry, for the simple reason that it was paramount that the Petitioner was afforded a hearing prior to the cancellation of the permit.

The fourth complaint was that a time period of 28 days must lapse prior to an order being made in terms of Section 109(1). As noted earlier, the inquiry is said to have been held on 26th February 2014 and the order '**1R11**' had been delivered on 14th March 2014. Thus, the 1st Respondent has further violated the provisions of Section 109(1).

The final complaint of the Petitioner was that although Section 112(1) requires every order made under Section 110, i.e. after an inquiry with the participation

of the permit holder, to be conveyed to the permit holder, the Ordinance is silent with regard to such a requirement in respect of an Order made under Section 109(1). However, given the consequence of such an Order, and the fact that a permit holder has no right of appeal, I am of the view that a copy of the Order made in terms of Section 109(1) should have been served on the Petitioner.

Sripavan J (as he was then), in the case of **Ratnayake v. Commissioner General of Excise and Others**[2], citing a paragraph from his own judgment in **Gamlathge Ranjith Gamlath v. Commissioner General of Excise and two others**[3], held as follows:

> "*It is one of the fundamental principles in the administration of justice that an administrative body which is to decide must hear both sides and give an opportunity of hearing before a decision is taken. No man can incur a loss of property by judicial or quasi-judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him. Thus, objectors at public inquiries must be given a fair opportunity to meet adverse evidence, even though the statutory provisions do not cover the case expressly. (vide Errington v. Minister of Health)*[4]*. The court would certainly regard any decision as having grave consequences if it affects proprietary rights*."

Taking into consideration all of the above circumstances, I am of the view that the 1st Respondent has disregarded the mandatory provisions of the Ordinance, and thereby deprived the Petitioner of *a fair opportunity to influence the outcome of the decision and so ensure the decision's integrity*.

[2] [2004] 1 Sri LR 115, pages 117-118.
[3] CA (Writ) Application No. 1675/02; CA Minutes of 28th March 2003.
[4] [1935] 1 KB 249.

The second argument of the learned Counsel for the Petitioner was that the Order cancelling the permit, '**1R11**' does not contain any reasons. I have examined '**1R11**' and find that this argument is correct.

In **Bank Mellat v. Her Majesty's Treasury**[5], a majority of five judges of the United Kingdom Supreme Court held as follows:

> *"The duty of fairness governing the exercise of a statutory power is a limitation on the discretion of the decision-maker which is implied into the statute. But the fact that the statute makes some provision for the procedure to be followed before or after the exercise of a statutory power does not of itself impliedly exclude either the duty of fairness in general or the duty of prior consultation in particular, where they would otherwise arise. As Byles J observed in Cooper v Board of Works for the Wandsworth District (1863) 14 CB(NS) 190, 194, "the justice of the common law will supply the omission of the legislature." In Lloyd v McMahon [1987] 1 AC 625,702-3, Lord Bridge of Harwich regarded it as "well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."*

Thus, even where the Statute does not expressly require reasons, I am of the view that administrative bodies must give reasons for its decision to those affected by such decision, and that failure to do so would result in the impugned decision being liable to be quashed. In this application, the failure to

[5] [2013] UKSC 39 at para 35.

give reasons becomes critical in the light of the attempts by the 1st Respondent to hand over the said land to the Rural Development Society.

As stated in **De Smith's Judicial Review**[6]:

> *"The beneficial effects of a duty to give reasons are many. To have to provide an explanation of the basis for their decisions is a salutary discipline for those who have to decide anything that adversely affects others. The giving of reasons is widely regarded as one of the principles of good administration in that it encourages a careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision-making. If published, reasons can provide guidance to others on the body's future decisions, and so deter applications which would be unsuccessful. The giving of reasons may protect the body from unjustified challenges, because those adversely affected are more likely to accept a decision if they know why it has been taken. Basic fairness and respect for the individual often requires that those in authority over others should tell them why they are subject to some liability or have been refused some benefit: in short, "justice will not be done if it is not apparent to the parties why one has won and the other has lost."[7] The giving of reasons increases public confidence in the decision-making process*.[8]"

In **Benedict and Others v. Monetary Board of the Central Bank of Sri Lanka and Others (Pramuka Bank case)**[9], this Court held as follows:

[6]Supra, page 442.
[7]English [2002] EWCA Civ 605; [2002] 1 WLR 2409 at [16].
[8]Stefan [1999] 1 WLR 1293 at 1300; Secretary of State for the Home Department v CC [2014] EWCA Civ 559 at [38] – [39].
[9] [2003] 3 Sri LR 68, page 78.

"*Failure to give adequate reasons therefore amounts to a denial of justice and is itself an error of law. The reasons must not only be intelligible but should deal with the substantial points which have been raised. The courts have treated inadequacy of reasons as an error on the face of record so that inadequately reasoned decision could be quashed, even if the duty to give reasons was not mandatory*."

As noted earlier, '**P19**' does not set out the conditions that have been violated by the Petitioner, nor does '**1R11**' set out the reasons for cancellation of the permit. While '**1R11**' is liable to be quashed due to the failure to give reasons, the absence of reasons clearly demonstrates that the Divisional Secretary did not have any basis to be satisfied that there has been a breach of the condition of the permit, which is a requirement that must be satisfied both in terms of Section 109(1), as well as under Section 110(1).

The learned State Counsel did not contest the fact that the Respondents have acted in violation of the aforementioned procedure laid down in the Ordinance. He however submitted that the land which is the subject matter of this application had been reserved for a public purpose and could not have been given to the Petitioner in the first place. He submitted that the Petitioner is guilty of several irregularities, and that the change of the land and the boundaries on '**P2**' had been effected by the Petitioner's brother-in-law, who was the Grama Niladhari for the area. This however does not appear to be correct for the reason that the endorsement amending the boundaries etc had been made by the 1st Respondent. He submitted further that even though the permit had been issued in the name of the Petitioner, she was not in occupation of the said land, and that it was her brother-in-law, Ganeshapillai, who was occupying the said land. He submitted further that the Petitioner has violated the conditions of the permit by seeking to alienate the said property

to her sister-in-law, and in these circumstances submitted that the Petitioner has not come before this Court with clean hands. In essence, the submission of the learned State Counsel was that this Court should refrain from exercising its discretion in favour of the Petitioner.

Even if the Petitioner deliberately kept away from the inquiry, which does not appear to be the case, I cannot disregard the antecedent circumstances surrounding the cancellation, which I have referred to earlier in this judgment, and the collateral purpose for taking steps under the Ordinance, namely the land being required for the Rural Development Society. Nor can I disregard the fact that the provisions of the Ordinance have been violated with impunity, as already noted, and a sham inquiry conducted to enable steps to be taken under the State Lands (Recovery of Possession) Act to eject the Petitioner from the said land, and thereby achieve the collateral purpose.

This Court, in **KIA Motors (Lanka) Limited vs Consumer Affairs Authority and Others**[10] has stated that, "*Authorities acting on behalf of the public ought to be accountable for the overall quality of the decision making process. While Courts must be mindful not to substitute its own decision for that of the public authority, this must be balanced with Courts taking an active role in probing the quality of decisions of public authorities, and ensuring that actions of public authorities are properly substantiated, justified, and strike a fair balance between parties*." I am of the view that the above view should be extended with equal force to ensure due adherence with the procedure laid down in an Act of Parliament. Public Officers cannot and should not be allowed to act in complete disregard of the laid down procedure, and make a mockery of the Rule of Law.

[10] CA (Writ) Application NO. 72/2013; CA Minutes of 26th May 2020.

I therefore grant a Writ of Certiorari quashing the notice issued under Section 106 of the Ordinance marked '**P19**', and the Order cancelling the permit marked '**1R11**'. All steps taken thereafter to eject the Petitioner from the said land, including the notice to eject the Petitioner issued under the provisions of the State Lands (Recovery of Possession) Act shall not be of any force. The Respondents shall be free to take steps against the Petitioner in terms of the Ordinance, if they are of the view that the Petitioner has violated the provisions of the permit '**P2**'. I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal