

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

In the matter of an application to obtain mandates
in the nature of Certiorari and Mandamus under and
in terms of Article 140 of the Constitution.

Thilakaratnalage Ariyamala
No. 59/6, Maduwegedara, Nittambuwa.

Petitioner

Case No. C. A. (Writ) Application 310/2014

Vs.

1. The Land Reform Commissioner
No. C82, Gregory's Avenue, Colombo 07.
2. The National Housing Development Authority
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Dr. Sunil Coorey for the Petitioner

Anusha Fernando DSG for 2nd Respondent

Written Submissions tendered on:

Petitioner on 15.02.2019

2nd Respondent on 28.01.2019

Argued on: 10.05.2019

Decided on: 31.01.2020

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Janak De Silva J.

The Petitioner claims that her late husband, Pathirennelage Wimalasena was the owner of the land forming the subject matter of this application. The petition sets out the pedigree on which this claim is based. However, the 2nd Respondent to this application had instituted action bearing number 3113/L in the District Court of Gampaha against the said Pathirennelage Wimalasena and Ven. Medhananda Thero and by judgment dated 30.08.2002 obtained a declaration of title to the said land [page 176 of X1]. This judgment was confirmed by the Civil Appellate High Court by judgment dated 26.01.2015 [2R1].

On 28.02.2008 the 2nd Respondent has taken a Board decision [2R2(b)] to sell the land parcels to 15 occupants after recovering the amount paid as compensation in respect of Lot No. 3 together with an interest rate of 12% per annum. This included the deceased husband of the Petitioner against whom the 2nd Respondent had by that time instituted action under the State Lands (Recovery of Possession) Act and obtained a writ of eviction.

The Board decision 2R2(b) was subsequently cancelled by Board decision marked 2R3(b) based on Board paper 2R3(a). The Petitioner seeks a writ of certiorari to quash this decision claiming that she had a legitimate expectation that the Board decision [2R2(b)] will be implemented.

In *Council of Civil Service Unions v. Minister for the Civil Service* [(1985) A.C. 374, 408-9] Lord Diplock stated that for a legitimate expectation to arise, the decision:

“must affect [the] other person by depriving him of some benefit or advantage which either (i) he had in the past been **permitted by the decision maker to enjoy** and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has **received assurance** from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.” (emphasis added)

Such legitimate expectations may arise where a public authority has made a clear, unqualified and unambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified, unambiguous and unqualified representation was made [Clive Lewis, *Judicial Remedies in Public Law*, 5th Ed., 248 (South Asian Edition)].

The terms of the representation by the decision-maker must entitle the party to whom it is addressed to expect, legitimately, one of two things:

- (a) That a hearing or other appropriate procedure will be afforded before the decision is made. (Procedural Legitimate Expectation); or
- (b) That a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied. (Substantive Legitimate Expectation)

The Petitioner is complaining both of a breach of procedural legitimate expectation as well as substantive legitimate expectation. The representation or assurance forming the basis of a claim of legitimate expectation must have been made to the party claiming to entertain the legitimate expectation. However, it is difficult to accept that the Petitioner entertained a legitimate expectation as she did not receive any assurance. In fact, even her deceased husband did not receive any representation that the land will be alienated to him as the Board decision 2R2(b) was not communicated to him.

Therefore, I hold that the Petitioner has failed to establish the requirements to create a legitimate expectation in her that the said land will be alienated to her.

The Petitioner is also seeking a writ of mandamus directing the 2nd Respondent to implement the Board decision 2R2(b) based on a legitimate expectation.

In *R. v. North and East Devon Health Authority, ex p. Coughlan* [(2000) 2 W.L.R. 622] the Court of Appeal held that where there is a dispute as to whether a legitimate expectation should be given effect to by enforcing it as a substantive legitimate expectation there is at least three possible outcomes with the court taking a different role in respect of each category.

- (a) The court may decide the public body only needs to bear in mind its previous policy or assurances, giving it the weight, it thought fit, but no more, before deciding to change course. The court will then only review the decision on conventional *Wednesbury* grounds.
- (b) The court may decide that the representation gives rise to a legitimate expectation of procedural benefit and if so, the court will require the opportunity for consultation to be given unless there is an overriding reason to withdraw from it.

- (c) The court will in a proper case, decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the legitimacy of the expectation is established, it is for the court to determine whether there is **sufficient overriding interest relied upon for the change of policy or to justify departing from the promise. The court is undertaking a balancing exercise between the public interest and the individual's interest** (emphasis added). This category is a clear acceptance of the doctrine of substantive legitimate expectation. The court defined the type of case of an enforceable expectation of a substantive benefit as being where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. Promises rather than policies are more likely to fall within this category.

There is evidence that the subsequent decision to cancel the first decision to sell the land to the deceased husband of the Petitioner and other unlawful occupiers was based on the loss that would be caused to the 2nd Respondent by implementing the earlier decision. This is because the sale price of the land decided by the Board of the 2nd Respondent was very low and implementing that decision would have caused a substantial loss to the 2nd Respondent who as a statutory public institution was bound to exercise its powers in accordance with the doctrine of public trust. In these circumstances, a writ of mandamus cannot in any event be issued.

There is also the question of inordinate delay. The decision sought to be enforced by a writ of mandamus is dated 26.02.2008 whereas the petition is dated 15.09.2014.

For all the foregoing reasons, the application is dismissed with costs.

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Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.
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Judge of the Court of Appeal