

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

In the matter of an application for
mandate in the nature of a writ of
Certiorari and writ of Mandamus under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Dunston Rajapaksha Alpitiya
No. 55, Anuradhapura Road,
Kahatagasdigiliya.

CA (Writ) No: 438/2019

PETITIONER

Vs.

1. D.M. Sudarshana Disanayaka
Divisional Secretary,
Divisional Secretariat,
Kahatagasdigiliya.
- 1a. R. Sentil
Divisional Secretary, Divisional
Secretariat,
Kahatagasdigiliya.
2. Sunil Shantha Alpitiya
Anuradhapura Road,
Kahatagasdigiliya.
3. Amal Roy Alpitiya
Anuradhapura Road,
Kahatagasdigiliya.

RESPONDENTS

Before : Dhammika Ganepola, J.
Damith Thotawaththa, J.

Counsel : Kapila Suriyaarachchi for the Petitioner.
Chaya Sri Nammuni, DSG for 1st
Respondent.
Ashiq Hassim with Sumendra Fernando
and Aneeraz Samahan for the 2nd and 3rd
Respondents.

Argued on : 03.12.2024

Written Submissions : Petitioner : 20.01.2025
tendered on 2nd & 3rd Respondents : 29.01.2025

Decided on : 04.03.2025

Dhammika Ganepola, J.

Factual Matrix of the application

A permit bearing no. 433/6/37A dated 27.06.1973 in respect of the subject land of this application was issued to the mother of the Petitioner namely K.L.A. Swarnaseeli by the District Secretary of Anuradhapura. In the year 2004, the Petitioner became the lawful permit holder of the subject land through an amendment made to the above permit by the 1st Respondent. Thereafter, the Petitioner improved and developed the

subject land by constructing a commercial building and enjoying the undisturbed and uninterrupted possession over 10 years. The Petitioner had paid permit renewal fees, rates and other charges concerning the subject land since 01.01.2004. In 2013, the 1st Respondent informed the Petitioner to obtain a long-term commercial permit for the land in dispute. The Petitioner continued to possess and develop the land in good faith, believing a long-term permit would be granted for the disputed land. However, despite the Petitioner's legitimate expectations, the 1st Respondent had informed the Petitioner by letter dated 01.11.2016 [P5] that the permit for the land in dispute will be granted to the 2nd and the 3rd Respondents as well. Accordingly, the Petitioner states that the decision reflected in document P5 is illegal, unfair, unreasonable and capricious. Accordingly, the Petitioner invokes the jurisdiction of this Court by way of Writ application seeking *inter alia* in the nature of Writ of Certiorari to quash the decision of the 1st Respondent to issue the permit to the 2nd and the 3rd Respondents as reflected in the document marked P5 and Writ of Mandamus directing the 1st Respondent to issue the permit to the Petitioner.

The 1st Respondent states that the change of the permit holder's name appearing on the permit [P1] is irregular as there are violations of the conditions attached to the permit, specifically conditions 7 and 8. It is claimed that the Petitioner has failed to substantiate with evidence, the fact that the Petitioner has obtained relevant approval for the constructions made on the subject land. Accordingly, the 1st Respondent submits that such constructions are unauthorized and the permit is liable to be cancelled owing to violation of any condition therein. The Petitioner has only paid the permit renewal fees until 2012. Hence, it is claimed that there has been no renewal of the permit thereafter. The 1st Respondent further states that the annual permit was cancelled by letter P5 due to violation of permit conditions. Accordingly, the 1st Respondent advances the position that the long-term possession of the subject land does not give rise to a right to the Petitioner for a long-term permit. It has further been submitted that an inquiry had been held in 2013 when the initial permit holder, the Petitioner's mother, was alive. The 1st Respondent states that the subject land was divided between the three male siblings, i.e. the Petitioner, the 2nd and the 3rd Respondents, in agreement with the parties and as per the wish of the Petitioner's mother and all the siblings.

The 2nd and the 3rd Respondents state that the amendment inserting the name of the Petitioner reflected in P1 is *ab initio void*, a nullity and of no force or avail in law. Upon a request made by the mother of the Petitioner, to the Divisional Secretary of Kahatagasdigiliya, the 1st Respondent had held an inquiry on 13.06.2016, attended by all parties, and resolved the matter by deciding to divide the subject land among the Petitioner, the 2nd and the 3rd Respondent with the agreement of all parties. Said decision has been notified to the Petitioner, the 2nd and the 3rd Respondents by the 1st Respondent by letter dated 01.11.2016 marked P5. Aggrieved by the said decision of the 1st Respondent, the Petitioner had instituted the action in the District Court of Anuradhapura bearing no. 28421/L seeking a declaration that the Petitioner be declared legal permit holder of the permit marked P1 and letter dated 01.11.2016 [P5] is issued against the law. The learned District judge has dismissed the action based on a preliminary objection raised by the 1st Respondent with regard to the maintainability of an action before a primary court against the administrative action of a public officer. The Respondents state that the Petitioner himself consented to the above division reflected in P5 and belatedly withdrew his consent based on the influence of his family members.

The Respondents state that the Petitioner is guilty of laches, suppression of material facts and that the Petitioner has not come before the Court with clean hands, and the application is misconceived of law.

Alleged Violation of the Condition of the Permit P1

It is on the common grounds that the permit bearing no. 433/6/37A had been issued to K.L.A. Swarnaseeli, the mother of the Petitioner, the 2nd and 3rd Respondents by the District Secretary. As per the entry/annotation dated 01.01.2004 that appears on permit P1, the name of the holder has been amended by inserting the Petitioner's name. The 2nd and 3rd Respondents argue that such insertion is illegal and of no force or avail in law. However, it is observed that such an entry/annotation has been signed and stamped by the Additional Divisional Secretary and the permit fees had been paid until 2012 without any impediment. It appears that no one has taken up any objection with regard to such amendment until the institution of the instant action. No acceptable reason whatsoever has

been advanced by the Respondent challenging the legality of such insertion.

The Divisional Secretary has acknowledged such insertion by his letter dated 01.11.2016 marked P5 and letter dated 05.04.2011 marked P9. Hence, the 1st Respondent is estopped from denying the legality or existence of such insertion. The 1st Respondent submits that such an insertion is irregular as the Petitioner has acted in violation of conditions 7 and 8 of the permit P1. Said conditions stipulate that any construction, permanent plantation or damage to the trees in the land could not be done without prior written approval of the Anuradhapura Divisional Secretary. It is apparent that the annual permit P1 is subject to the terms and conditions therein. Although the said permit may be cancelled upon violation of conditions therein, there are no materials placed before this Court to conclude that the conditions under the aforesaid permit have been violated or that on such premises the permit P1 has been cancelled. It is also observed that the Petitioner has not been informed of any such cancellation of permit P1 owing to the violation of conditions therein while such permit was valid.

The Divisional Secretary has observed violation of certain conditions of the permit P1 by his letter P5 in the year 2016, long after the expiration of the permit. However, the conditions so violated have not been specified in the said letter P5. The 1st Respondent claims that the Petitioner constructed and developed structures on the subject land without prior approval. However, upon perusing the documents marked P4, dated 09.01.2013, and P9, dated 05.04.2011, it is apparent that the Divisional Secretary has consented to renting out such structures. If the Divisional Secretary was of the opinion that the alleged constructions were unauthorized, the Divisional Secretary should have taken appropriate steps to hold an inquiry and cancel the permit at such an instance instead of approving the Petitioner's request for renting out the building. As such, I am of the view that the Respondents have failed to satisfy this Court that necessary steps have been taken by the Divisional Secretary in view of the alleged violation of the conditions of the Permit P1 by the Petitioner. Accordingly, this Court is not inclined to accept the premise advanced by the Respondents that the permit in subject was cancelled based on violation of the conditions therein. It is noted that neither has the competent authority taken any steps to cancel the permit owing to

violation nor has it held any inquiry with regard to the violation of any conditions therein. The permit in respect of the subject land had simply expired in 2012 and the same had not been renewed thereafter.

Validity of the Annual Permit

The Petitioner contended that the purported cancellation of the permit is unlawful, and that it should be deemed to be valid and still in force. It is significant to observe that the permit marked P1 is an annual permit which had to be renewed annually. Unless the permit is renewed annually, it expires at the end of the specified period therein. Nevertheless, the annual permit marked P1 has not been extended beyond the year 2012.

The Petitioner states that he was asked to obtain a long-term commercial permit by the 1st Respondent by his letter dated 09.01.2013 marked P4. Further, the Petitioner submits that he participated in the inquiry held by 1st Respondent in the year 2013 regarding the issuance of a long-term commercial permit. Consequent to the said inquiry, the 1st Respondent had not charged the permit fee for the year 2013, stating that no fee would be charged from the permit holders until the new long term commercial permit is issued.

The Petitioner had failed to present any evidence before this Court that there had been an inquiry in 2013 regarding the issuance of the long-term commercial permit. There is no evidence whatsoever placed before the Court indicating that the 1st Respondent informed the Petitioner that no annual fee would be charged until the long-term commercial permit is issued. Furthermore, as per the State Land Ordinance, no annual permit shall be considered valid and effective beyond its specified period without renewal. Accordingly, in my view, the most rational conclusion the Court can reach is that the validity of the annual permit lapsed in 2012. Accordingly, the Petitioner is not entitled to make any legal claim based on such expired permit.

Alleged Legitimate Expectation upon the Expired Permit P1

However, the Petitioner claims that he has a legitimate expectation to obtain a long-term commercial permit as he has uninterrupted possession of the subject land for over ten years. When a public authority gives a promise or adopted practice, and a citizen acts upon it, the law requires

the promise or practice to be honored unless there is a valid reason not to do so. In *R (on the application of Nadarajah) v. Secretary of the State for the Home Department*, *R(on the application of Abdi) v. Secretary of the State for the Home Department (2005) TLR,14 December*, Lord Justice Laws stated that the theme running through the legitimate expectation cases was that '*where a public authority had issued a promise or adopted a practice which represented how it proposed to act in a given area, the law would require the promise or practice to be honoured unless there was good reason not to do so*'.

Although the Petitioner submits that he has made an application for a long-term commercial permit in respect of the subject land, it appears that no such application or request had been made to the 1st Respondent and no materials have been placed before this Court to satisfy that the Petitioner has taken any positive steps to proceed with such request. However, as per the documents marked P4 dated 09.01.2013 and the document marked P9 dated 05.04.2011, the Petitioner had been asked to obtain a long-term commercial permit by the Divisional Secretary.

Despite the Petitioner's claims of a legitimate expectation to have a long-term commercial permit, it appears from the Plaint of the District Court of Anuradhapura Case bearing no.28421/L filed by the Petitioner that the Petitioner's mother K.L.A. Piyaseeli on 07.02.2013 had requested the 1st Respondent to divide the subject land among the Petitioner, the 1st and the 2nd Respondents. It further appears that the Petitioner had consented to said request of the mother at the time [see paragraph 04 and 05 of the aforesaid Plaint marked X2 and submitted by the 2nd and 3rd Respondents]. The Petitioner reiterated the same facts in his letter dated 13.06.2016 to the Divisional Secretary, which is part and parcel of the above District Court case record. The institution of the aforesaid District Court case has not been denied by the Petitioner.

In view of the above stance taken up by the Petitioner in the said District Court case, this Court views that the Petitioner by his own conduct has waived off his right to claim legitimate expectation of long term commercial permit in favour of only him. Acting in accordance with the request made by the original permit holder K.L.A. Piyaseeli and considering the above agreement between the parties, the Divisional Secretary has communicated his decision to divide the subject land

among the Petitioner, the 2nd and the 3rd Respondent by letter marked P5. However, the Petitioner in his plaint of the aforesaid District Court case [*vide* paragraph 06 of X2] indicates that he withdrew such consent granted at a later stage. However, I am of the view that such a withdrawal cannot be accepted without any acceptable justification. Hence the Petitioner is not entitled to claim relief based on legitimate expectation as averred in the Petition.

The Divisional Secretary has inquired into the matter after the expiration of the validity of the annual permit in 2012. By such time the Petitioner was not the lawful permit holder. The request for the division of the subject land made by the original permit holder, i.e. the mother of the Petitioner, had been considered and determined by the 1st Respondent with the agreement of all necessary parties within authority. Accordingly, I see no illegality, irrationality or arbitrary act on the part of the 1st Respondent to divide the rights over the subject land among the siblings.

Suppression of material facts.

It is observed that the Petitioner has suppressed the fact that he has consented to division of the subject land on his mother's request as far back as in 2013 and withdrew the same later until the Respondents disclosed the same. The Petitioner failed to disclose the outcome of the above District Court case to this Court. The petitioner has failed to disclose that the decision in letter P5 had been reached pursuant to an inquiry that included the participation of all relevant parties. In my view, those are very material facts in determining the instant application. It is settled law that the party who is seeking prerogative relief should come to court with clean hands. It is the duty of such person to disclose all the material facts before the Court at the very outset. Material facts are essential for the Judge to consider in evaluating the application. The Court alone determines what constitutes material and this assessment is not based on the opinions of the applicant or their legal advisers.

In ***Alphonso Appuhamy v. Hettiarachchi (1973) 77 NLR 131*** at 135 stressed on the necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ of injunction is made. At page 136 it was held that "In other words, so rigorous is the necessity for a full and fair disclosure of all material facts that the Court

will not go into the merits of the application but will dismiss it without further examination.”

Conclusion

In the circumstances and the reasons given above I am of the view that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition. Accordingly, I proceed to dismiss the application. I order no cost.

Application is dismissed.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal