

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

In the matter of an application for
the issuance of mandates in the
nature of Writ of Mandamus and
Prohibition in terms of Article 140
of the Constitution.

Kudage Yasanthi Jayasekera
No. 97/17D Jakotuwa,
Welewatte,
Wellampitiya.

Deceased Petitioner

CA (Writ) No. 04-2020

Vidanalage Premarathna
No. 97/17D Jakotuwa,
Welewatte,
Wellampitiya.

Substituted Petitioner

Vs.

1. Land Reform Commission
No. 475, Kaduwela Road,
Battaramulla.
2. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : **Hon. M Sampath K. B Wijeratne, J.(CA)**
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Padma Bandara P. C with Samurdhi
Fernandopulle instructed by
Widyanandage Pasidu Prabath for the
Petitioner.

Kaushalya Nawaratne, P.C with Sandun
Sanjeewa instructed by NW Associates
for the 1st Respondent.

Written Submissions : Petitioner filed on 07.12.2023.
1st Respondent-Respondent filed on
08.01.2024.

Argued on : 09.07.2024

Decided on : 13.09.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Petitioner had instituted this action to invoke the Writ Jurisdiction of this court to obtain the reliefs prayed for in the prayer of the petition dated 13th January 2020.
- 2) The reliefs sought by the Petitioner against the Respondents are as follows;
 - a) To issue notice on the 1st and 2nd Respondents above named;
 - b) To issue a Writ of Mandamus directing the 1st Respondent to grant a deed of transfer in favour of the Petitioner in respect of the portion of land reserved for the Petitioner which is morefully described in the schedule below;
 - c) To issue a Writ of Prohibition restraining the 1st Respondent from making arrangements to draw new survey plans and

separate several lots from and out of the land which has been already reserved for the Petitioner;

- d) To grant cost and;
- e) To grant such other and further relief as to your Lordships court shall seems meet.

Facts of the case

- 3) The Petitioner had instituted this action to issue a Writ of Mandamus directing the 1st Respondent to grant a deed of transfer in favour of the Petitioner in respect of the property which is described in the schedule to the petition.
- 4) The crux of this case is the father of the Petitioner had served as the caretaker of a land known as *Jakotuwawatta*, which is in extent of 22 acres located in *Wellampitiya*.
- 5) The aforesaid land originally belonged to a company named *J.L.D Peiris Company*. In recognition of the Petitioner's father's service as a caretaker, the said company had promised to grant 4 acres from the aforesaid land to the Petitioner's father.
- 6) Subsequently, the said portion was granted to the Petitioner's father who then independently possessed the said 4 acres of land.
- 7) Following his demise, the Petitioner's mother *K.A Lusihamy*, along with her children, including the Petitioner, continued to occupy the said land.
- 8) On or around the year 1975 the entire main land was vested with the 1st Respondent. Thereafter, the Petitioner's mother had preferred a claim to the 1st Respondent to divest the portion occupied by her family.
- 9) In response, the Land Reform Commission had decided to grant 5 separate portions of the said land to *K.A Lusihamy* and her children.

- 10) After complying with the Land Reform Commission procedures to obtain the valuation in respect of the separate lots, the relevant charges, including handling charges, legal fees, and the appraised value, were deposited by *K.A Lusihamy* and her children.
- 11) Despite fulfilling these financial obligations, the Land Reform Commission had failed to issue the deeds. Thus, *K.A Lusihamy* had appealed to the Prime Minister and the relevant authorities. However, the Land Reform Commission has yet to issue the deeds since 1975.
- 12) *K.A Lusihamy's* family had been paying the assessment tax for the said property to the *Kotikawatte Mulleriyawa Pradeshiya Sabha* and the Petitioner had been registered as a voter from this location.
- 13) The Petitioner's mother, *K.A Lusihamy* passed away on 30th December 2018 and the Petitioner and her siblings inherited her portion of the land. Subsequently, the Petitioner became aware of the Land Reform Commission's intention to conduct a further survey to partition a portion of the lot allotted to *K.A Lusihamy* without informing the Petitioner or her siblings.
- 14) Further, the 1st Respondent, the Land Reform Commission had issued deeds to several other occupants of the larger estate without considering the issuance of transfer deeds to the Petitioner. On that, the Land Reform Commission has acted *ultra vires* and with *malafide*.
- 15) On the aforesaid grounds the Petitioner had sought reliefs from this court under Writ Jurisdiction.

Objections of the 1st Respondent

- 16) The 1st Respondent raised a preliminary objection on the grounds that the Petitioner is not legally or factually entitled to maintain the present action.
- 17) Further, the Petitioner has failed to bring the necessary parties before this court.
- 18) Therefore, this application is bad in Law. And cannot be maintained.
- 19) Further, the 1st Respondent had contended that the Petitioner is not entitled in Law to invoke discretionary remedies and that the Petitioner has failed *ex facie* to disclose any statutory entitlements to obtain the land in dispute and/or statutory obligation on the part of the 1st Respondent.
- 20) Furthermore, the 1st Respondent had stated that there is a boundary dispute between the Petitioner and a neighbouring party.
- 21) Therefore, the 1st Respondent is unable to alienate the allotted land to the Petitioner.
- 22) On the said grounds, the 1st Respondent had moved to dismiss the application made by the Petitioner.

Disputed facts

- 23) Considering the arguments raised by the Counsels for both the Petitioner and the Respondents, and on perusal of the documents and the written submissions, I have to consider the following disputed facts, to arrive at a conclusion.
 - I. Is the land described in the schedule to the petition dated 13th January 2020 part of *Jakotuwawatte* which encompasses an extent of 22 acres?

- II. Did the owners of the said land promise to allot 4 acres of the land to the Petitioner's father?
- III. If so, on the said grounds after the demise of the Petitioner's father, did the Petitioner's mother and siblings reside on the said land?
- IV. After the demise of the Petitioner's mother, had the 1st Respondent agreed to allot that land to the Petitioner?
- V. Is there any boundary dispute to the land referred to in the schedule to the Petitioner?
- VI. Has the Petitioner made respective procedural payments and fulfilled the conditions to obtain the said allotted land?
- VII. If so, can the Petitioner maintain this action to obtain reliefs under Writ Jurisdiction?

I Is the land referred to in the schedule to the petition dated 13th January 2020 part of *Jakotuwawatte* which is in extent of 22 acres?

- 24) Referring to P1, P1 (a) Plan No. 366 prepared by surveyor *K.W. D. Chandrani* and which is reproduced by the 1st Respondent as 1R1 and 1R2 confirms the land referred to in the schedule to the petition dated 13th January 2020 is a part of *Jakotuwawatte*.
- 25) The 1st Respondent had not challenged the said position. Therefore, it must be accepted *prima facie* that the disputed land described in the schedule to the petition is an allotted lot of the *Jakotuwawatte* land.

II. Did the owners of the said land, promise to allot 4 acres of the land to the Petitioner's father?

- 26) As per the facts related in the petition from paragraph 5 to paragraph 14, the Petitioner's father was the caretaker of the 22 acre *Jakotuwawatte* land. As per the facts contained in the petition, the position taken by the Petitioner is that the original owners of the *Jakotuwawatte* which is known as *J.L.D Peiris Company* had granted a portion of 4 acres of the aforesaid *Jakotuwawatte* to the Petitioner's father.
- 27) Although there are no documents to substantiate this position the 1st Respondent has not contested any of the facts related to the title received by the Petitioner's predecessor.
- 28) Therefore, as the Petitioner and her siblings had possessed the said allotments which are referred to in P1 and P1 (a) for an extended period, both before and after the said land was vested with the 1st Respondent, it is abundantly clear that the allotments occupied by the Petitioner and the family members had been received from the Petitioner's father.

III. If so, on the said grounds after the demise of the Petitioner's father did the Petitioner's mother and siblings reside on the said land?

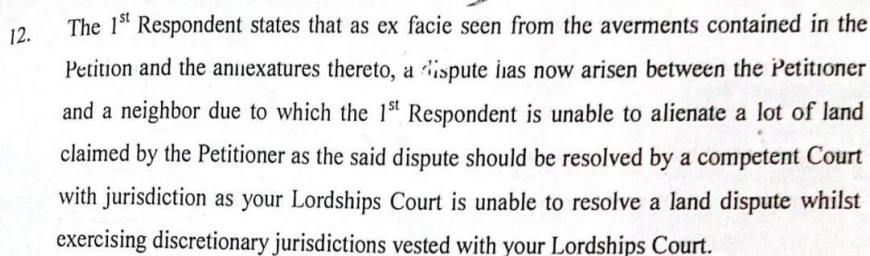
- 29) There is no doubt, based on the facts outlined in the petition and the grounds argued by both counsels had not challenged that after the Petitioner's father's demise the Petitioner's mother, the Petitioner and siblings had not occupied the said land.
- 30) None of these facts had been addressed by the Respondents in their objections. Therefore, it is evident that the disputed

allotments had been occupied by the Petitioner's mother *K.A Lusihamy*, the Petitioner and her siblings.

- 31) These facts are strengthened by the documents marked and produced as P2 to P8.

IV. Before and after the demise of the Petitioner's mother had the 1st Respondent agreed to allot that land to the Petitioner?

- 32) The 1st Respondent had agreed to allocate lot numbers referred to in the P1 plan to the mother of the Petitioner, Petitioner, and the siblings of the Petitioner. The said fact is supported by the report which is attached to the P1 plan.
- 33) Further, the 1st Respondent had obtained a valuation report and requested that the Petitioner deposit the asset value for an allotment which is referred to in the schedule to the petition. The said fact is confirmed by P2 (a) and P2 (b) documents issued by the 1st Respondent to the Petitioner.
- 34) It is abundantly clear P2 (a) and P2 (b) tax invoices has been issued to the allotment 20 referred to in P1 (a), which corresponds to the property described in the schedule to the petition.
- 35) However, despite taking all these steps the 1st Respondent had failed to execute deeds in favour of the Petitioner. It is noteworthy to refer paragraph 12 of the statement of objections filed by the 1st Respondent dated 4th July 2023. I reproduce the said paragraph as follows;



12. The 1st Respondent states that as ex facie seen from the averments contained in the Petition and the annexures thereto, a dispute has now arisen between the Petitioner and a neighbor due to which the 1st Respondent is unable to alienate a lot of land claimed by the Petitioner as the said dispute should be resolved by a competent Court with jurisdiction as your Lordships Court is unable to resolve a land dispute whilst exercising discretionary jurisdictions vested with your Lordships Court.

- 36) The reason given in the aforesaid paragraph 12 of the 1st Respondent's objections that there is a land dispute between the Petitioner and a neighbour of the Petitioner. However, the 1st Respondent had failed to produce any single document to support the said contention.
- 37) Therefore, I am of the view there is ample evidence to support that the 1st Respondent is committed to execute deeds in favour of the Petitioner in respect of the subject matter referred to in the schedule to the petition.

V. Is there any boundary dispute to the land referred to in the schedule to the Petitioner?

- 38) As I have reproduced paragraph 12 of the 1st Respondent objections in the 4th disputed point, I have explained that the 1st Respondent had failed to produce any document to substantiate the claim of a boundary dispute in respect of the land claim by the Petitioner.
- 39) This fact was raised when the matter was argued between the parties. Subsequently, with the agreement of the parties, a report was requested from the same surveyor who prepared the P1 plan.
- 40) The said report is marked and produced as "X". Hence, I reproduce the said document in which the surveyor had emphasized that in allotment No 20 there is no disputed boundary. The line shown cutting across the said allotment is referred to as a "ridge" and it does not divide the said allotment No 20 as two lots.

"X"

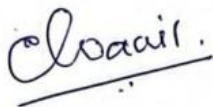
K.W.D. චන්ද්‍රානි,
බලයලත් මිනින්දෝරු
අංක 47,
වෙල්යාය පාර,
නාවින්න, මහරගම.
07/05/2024

නීතිඥ විද්‍යානන්දගේ පසිඳු ප්‍රබාත්
2/35, බැද්දගාන පාර දකුණ,
පිටකෝට්ටේ

පිඹුරු අංක 366 දී මායිම් පිළිබඳව වැඩිදුර දැනගැනීම

1. ඔබ විසින් මා වෙත එවන ලද 2024/05/04 දිනැති ලිපිය හා බැඳේ
2. මාගේ පිඹුරු අංක 366 හි කැබලි අංක 19 හා 20 හරහා තිරස්ව දිවෙන ඉර මගින් එම ඉඩමේ පිහිටි නියරක් දක්වා ඇත. නමුත් පිඹුරේ එම ඉර නියරක් ලෙස වචනයෙන් සඳහන් කර නොමැත. එම ඉර මැදින් යොදා ඇති යා ලකුණ (ූ) කැබලි අංක 19 යෙහි නියර මගින් බෙදී ඇති මුත් එම කොටස් දෙකම එක් කැබැල්ලක් සේ සලකන බවත්ය. එය කැබලි අංක 20 සඳහාද එසේම අදාළ වේ

මිට විශ්වාසී



K.W.D. චන්ද්‍රානි,

K.W.D. CHANDRANI
Registered Licensed Surveyor
30, Welyaya Road
Nawinna, Maharagama
Tel- 0714781708
Reg.No. 19950181

- 41) The said report of the surveyor *K.W.D Chandrani* had confirmed there is no boundary dispute to the allotment No 20 land referred to in the schedule to the petition.
- 42) On the said grounds, I accept the position taken by the Petitioner that there is no land dispute related to the land allotted to the Petitioner referred to in schedule to the petition.

VI. Has the Petitioner made respective procedural payments and fulfilled the conditions to obtain the said allotted land?

- 43) I have already analyzed this fact under disputed point No IV. However, again I will refer to the following documents which demonstrate that the Petitioner had taken steps to fulfill the obligations to obtain allotment No 20, which is referred to in P1 Plan and the schedule to the Petitioner.
- 44) On perusal of P2 (a) and P2 (b) tax invoices, it is evident that the Petitioner has made the payments requested by the 1st Respondent after the 1st Respondent obtained P1 Plan.
- 45) The said asset values are accepted and those tax invoices had been issued by the 1st Respondent.
- 46) As the 1st Respondent had delayed to execute the deed allotted to the Petitioner, the Petitioner had written several letters to the chairman of the land reform commission and the relevant ministry and the President of Sri Lanka.
- 47) Those facts are supported by P 3 to P5 (b) documents.
- 48) It should be noted that the Petitioner had made payment of assessment tax as evident by documents P6 (a) to P6 (f), for the said allotment referred to in the schedule to the petition.
- 49) The *Kotikawatta-mulleriya Pradeshiya Saba* had confirmed by P7 (a) letter that they had issued assessment numbers to the

Petitioner. And for the said assessment numbers Petitioner had made tax payment as evident by P7 (b) to P7 (e) receipts.

- 50) Further, by P8 document it is submitted that the Petitioner is a listed voter for the assessment number referred to in the property related to the schedule to the petition.
- 51) Subsequently, the Land Reform Commission had issued letters, marked as P9 (a), P9 (b) and P9(c) to resurvey the same allotments again to confirm the boundaries.
- 52) Considering the aforesaid facts, it is evident that the 1st Respondent had already surveyed the allotments and valued the said allotments for the occupants to make the relevant payments.
- 53) Considering the said valuation, the Petitioner had made payments to the 1st Respondent by P2 (a) and P2 (b) receipts and the 1st Respondent had accepted it.
- 54) Therefore, I see no reason why the 1st Respondent should not execute the deed for the allotments referred to in the schedule to the petition, as claimed by the Petitioner.
- 55) On perusal of document P10 the Petitioner has taken steps to send a letter of demand to the 1st Respondent to execute a deed for the allotment referred to in the schedule to the petition for which the 1st Respondent had failed.
- 56) Thus, I am of the view that the Petitioner has a legitimate expectation to obtain the deed to the said allotment from the 1st Respondent.

VII. If so, can the Petitioner maintain this action to obtain reliefs under Writ Jurisdiction?

- 57) Considering the arguments, documents, and the written submissions, I am of the view that the Petitioner is entitled to maintain this action to seek reliefs for Writ of Mandamus and Writ

of Prohibition prayed in the prayer of the petition. Hence, I reject the preliminary objections raised by the 1st Respondent.

- 58) Having fulfilled all the obligations preferred by the 1st Respondent to grant a deed for the property referred to the schedule to the petition. The first 1st Respondent had failed the duty cast upon him to execute a deed for the said subject matter.
- 59) The only excuse provided by the 1st Respondent is in paragraph 12 of the statement of objections that the 1st Respondent is unable to execute a deed due to a land dispute between the Petitioner and a neighbour, related to the subject matter.
- 60) Nonetheless, as I have mentioned before, I have decided there is no land dispute related to the subject matter referred to in the schedule to the petition. And there is no document to support a land dispute to the property referred to the schedule to the petition.
- 61) Thus, it is evident the 1st Respondent for no given reason delaying the execution of the deed to the property referred to the schedule to the petition.
- 62) In the case of ***Podimahathmaya v The Land Reform Commission***¹ Palakidar J articulated as follows;

“This Court can interfere when there is a manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice.”

In the case of ***Welikanna v Inspector General of police and others***² Amarathunga J observed that;

“The absence of precedent does not deter me when I am convinced that only effective remedy

¹ [1990] 2 SLR 416 at 419

² [2002] 2 SLR 287 at 300

the injustice caused to the petitioners is an Oder of Mandamus.”

- 63) Therefore, if a conduct of a given official is illegal/ unreasonable, if the said official is not executing his duties, a party is entitled to seek reliefs under Writ Jurisdiction.
- 64) It is proven by the Petitioner in the instant application that they are entitled to the reliefs claimed by them.
- 65) Further, the Petitioner had sought the Writ of Prohibition to draw new surveyor plans. As I have analyzed it is sufficient to the 1st Respondent to demarcate the boundaries referred to the lot no 20.
- 66) Hence, a Writ of Prohibition can be issued against the 1st Respondent.
- 67) As per Sunil F.A Coorey in his book of ***Principles of Administrative Law in Sri Lanka***³

“the circumstances in which Certiorari and Prohibition will be available have been summed by Lord Justice Atkin an English Judge, in the following famous words which on numerous occasions have been cited and followed by our courts.;

Whenever anybody of persons having legal authority to determine affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King’s Bench Division exercised in these Writs”.

³ Coorey. F.A., 2001. *Principles of Administrative Law in Sri Lanka*. 2nd ed.

- 68) In the book of ***Administrative Law***⁴ by Wade and Forsyth it was stated;

“Although a prohibiting Order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective, and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting Order.”

- 69) Hence, Issuance of a Prohibition Order will restrain the 1st Respondent wrongfully surveying the subject matter. Therefore, the Petitioner is entitled to the reliefs under Writ Jurisdiction.

CONCLUSION

- 70) In considering the facts, arguments and written submissions, the Petitioner has proved his case to obtain the reliefs of the prayer of the petition dated 13.01.2020.
- 71) Thus, I grant reliefs **“b,c,d”** in the prayer of the petition dated 13.01.2024

Judge of the Court of Appeal

M. Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal

⁴ Wade, H.W.R. and Forsyth, C.F.,2020. *Administrative Law*. 11th ed. Oxford: Oxford University Press