

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 the Writ of Mandamus, Prohibition and Certiorari under Article 140 of the Constitution.

CA/WRT/362/2022

Ahamed Lebbe Uthumalebbe
No. 201B, New Road
Kalmunaikudy-13

Petitioner

1. Hon. Harin Fernando
Minister of Tourism and Lands
Ministry of Lands, “Land Secretariat”
No. 1200/6, Rajamalwatta Road
Battaramulla
2. Mr. K.D. Bandula Jayasinghe
Commissioner General of Lands
Land Commissioner General’s Department,
“Land Secretariat”
No. 1200/6, Rajamalwatta Road
Battaramulla
3. Mrs. W.W.A. Chandra
Commissioner General of Lands
Land Division II
Land Commissioner General’s Department,
“Land Secretariat”
No. 1200/6, Rajamalwatta Road, Battaramulla
4. Miss I Samaratunge
Assistance Commissioner of Land

Land Division II
Land Commissioner General’s Department,
“Land Secretariat”,
No. 1200/6, Rajamalwatta Road, Battaramulla
5. D.M.R. Dassanayake

Provincial Commissioner in the Eastern
Province, Department of land Administration,
Eastern Province

Inner Harbour Road, Trincomalee

6. Mr. Liyakath Ali

Divisional secretary, Divisional Secretariat
Kalmunai.

7. Uthumalebbe Mohamed Ashraff

No. 211, New Road

Kalmunaikudy 13

Respondents

Before : N. Bandula Karunarathna, P/CA, J.

B. Sasi Mahendran, J.

Counsel: Geoffrey Alagaratnam, PC with Abdul Najeem and Vishakan Sarveswaran
for the Petitioners

V. Puvitharan, PC with G.A. Arunraj, T. Yakaruban and J.B. Ragul for
the 7th Respondents

Ishara Madarasinghe, SC for the State

Argued On: 30.07.2024

Written 04.09.2024 (by the Petitioner)

Submissions On : 09.09.2024 (by the 7th Respondent)

Judgment On: 07.10.2024

B. Sasi Mahendran, J.

The Petitioner instituted this application to obtain the following reliefs prayed for in the amended Petition dated 05.06.2023:

- a. Issue notice of this application on the Respondents.
- b. Issue a stay order preventing the 1st and /or 02nd and/or 03rd and/or 04th and/or 5th and or 6th, Respondents and/or their agents and/or subordinate Officers from taking any further decision and/or steps under the provisions of the State Lands Ordinance No. 08 of 1947 as amended, to give long term lease of the state land to

the 07th Respondent, which said state land was held by the Petitioner from 1976 under an Annual Permit No. AM/ KP/AL / 144, until the final hearing and determination of this Application.

- c. Issue a Writ of Certiorari to quash any and all purported decisions made by the 02nd Respondent to recommend to the 01st Respondent to approve the grant of a long-term lease to the 07th Respondent for the state land which was given to the Petitioner in 1976 under an Annual Permit bearing No. AM/ KP/AL/ 144.
- d. Issue a Writ of Certiorari to quash the recommendation made by the 05th Respondent in his letter dated 23.03.2022 recommending the grant of a long-term lease to the 07th Respondent for the state land which was given to the Petitioner in 1976 under an Annual Permit bearing No. AM/KP/AL/ 144.
- e. Issue a Writ of Prohibition prohibiting the 01st Respondent, his agents and officers from giving approval or for the granting of a long term lease to the 07th Respondent or giving effect to same for the state land which was given to the Petitioner in 1976 under an Annual Permit bearing No. AM / KP/AL / 144.
- f. Issue a Writ of Mandamus ordering and or directing the 01st and/or 2nd and/or 03rd and/or 04th and or 5th and or 6th Respondents their agents and/or servants and/or Officers to grant a long term lease to the Petitioner in terms of the State Lands Ordinance No. 08 of 1947 as amended, for the same ad which was given to the Petitioner in 1976 under an Annual Permit bearing No. AM/KP/AL/ 144.
- g. Issue a Writ of Mandamus ordering and or directing the 06th Respondent to take immediate legal steps under provisions of the State Lands (Recovery of Possession) Act No. 07 of 1979 as amended, to eject the 07th Respondent from the building bearing No. 210, Main Street, Kalmunai situated on the land given to the Petitioner in 1976 under an Annual Permit bearing No. AM/ KP/AL/ 144.

- h. Direct the 02nd, 03rd, 04th , 05th, and the 06th Respondents to produce before Your Lordships' Court for the perusal of Your Lordships the files maintained by them in respect of the state land given to the Petitioner in 1976 under Annual Permit bearing No. AM/KP/AL/144 containing all documents related to the Petitioner's and 07th Respondent's claim for long term lease of the said state land and various decisions, recommendations and determinations made by the 02nd, 03rd, 04th , 05th, and the 06th Respondents and their predecessors in office and reports submitted time to time by various officers in respect of the claim made by the Petitioner and the 07th Respondent to determine legality of orders made.
- i. For costs, and
- j. For such other and further relief as to Your Lordships' Court shall seem fit and meet.

The Facts of this case, albeit briefly, are as follows:

The Petitioner claims that he occupies a land situated in Kalmunai to an extent of 4.5 perches by virtue of an annual permit bearing No. AM/KP/AL/144 issued in terms of State Lands Ordinance No 8 of 1947, as amended. Having obtained the said land, the Petitioner claims, on or around 1977, to have constructed a shop on it, and since then to have conducted commercial activities on it. In 1996, one of the Petitioner's sons, one Mohamed Aarif (the 7th Respondent), obtained an annual permit bearing No. AM/KP/AL/146 to an extent of 4.4 perches of land adjoining the Petitioner's land. On or around 2007, the said lands were amalgamated, and a three-storey commercial building had been constructed by the Petitioner and his son.

On or around 2008, the Petitioner made an application to the Divisional Secretary, Kalmunai to obtain a long-term lease, based on an intimation from the State that it had been decided to grant long-term leases on annual permits. According to the Petitioner, his annual permit was regularly renewed until the end of 2010. The Petitioner stated that he handed over his annual permit to the subject clerk to renew the annual permit for the year 2011. By letter dated 12.01.2008, the Petitioner was asked to pay a fee to

resurvey the said land. Somewhere in 2011, the Petitioner became aware that the Respondents were planning to recommend the 7th Respondent for the purpose of issuing a long-term lease on the basis that the Petitioner had given consent to transfer the said land to the 7th Respondent.

The Petitioner objected saying that he had not consented as such. On 02.03.2018, the 7th Respondent, one of the Petitioner's sons, forcibly entered the building by breaking the padlocks claiming that he was issued with a permit by the Divisional Secretary, Kalmunai. The Petitioner lodged a Police Complaint and instituted an action in the District Court of Kalmunai seeking an interim order preventing the 7th Respondent from entering the building. The court on 29.08.2018 issued an interim injunction against the 7th Respondent.

Thereafter, during the pendency of proceedings before the District Court of Kalmunai, the Petitioner, through his lawyer, by letter dated 19.06.2018, requested the Assistant Commissioner of Lands to conduct a fresh inquiry on the dispute over the said land. On his request, the Assistant Commissioner of Lands by letter dated 19.06.2018 directed the Deputy Land Commissioner in Ampara to conduct an inquiry. By letter dated 05.06.2018, the Petitioner was asked to be present for an inquiry on 17.07.2018. However, the Petitioner claims to have received only the said letter only on 16.07.2018. The Petitioner had informed that he would not be able to attend the said inquiry. Thereafter, by letter dated 09.06.2018, the Petitioner was asked to be present on 24.07.2018 for an inquiry. In the meantime, the Petitioner has received a letter dated 17.07.2018 from the said Commissioner indicating a letter submitted by the Petitioner consenting to transfer the land to the 7th Respondent and for a long-term lease to be given to the 7th respondent on the following conditions:

- i. "All income generated from the building situated in the said land should go to the Petitioner until his death.
- ii. The 7th Respondent should take the responsibility of maintaining his father since he is sick."

Later, the Petitioner came to know that the Kalmunai Divisional Secretary, the 6th Respondent recommended the long-term lease to be given to the 7th Respondent. Further, the 5th Respondent requested the Petitioner by letter dated 02.03.2020, marked as P27, to be present for an inquiry on 05.03.2020. During the said inquiry, the

Petitioner and the 7th Respondent were present, and their statements were recorded. The Petitioner denied signing such a document and handing over the property to the 7th Respondent.

Further, the official who conducted the inquiry observed that the annual permit issued to the Petitioner, was not cancelled in accordance with Section 106 of the Land Development Ordinance No. 19 of 1935 (as amended), and that the said annual permit was renewed until 2010. The Committee observed that there was a recommendation of the then Divisional Secretary, to grant the long-term lease to the Petitioner. Accordingly, the Petitioner had paid the relevant fees. The said inquiry and findings are marked as P53 in the counter objections. According to the Petitioner, these documents were obtained only consequent to an order made by the Right to Information Commission in an appeal.

Thereafter, by letter marked as P28 dated 25.11.2020, the then Provincial Land Commissioner of the Eastern Province informed the Commissioner General of Lands recommending that the Petitioner should be given the long-term lease. Acting on the aforesaid recommendation, steps were taken to issue the long-term lease to the Petitioner.

However, the 7th Respondent complained to the 3rd Respondent by letter dated 07.05.2021 with regard to the grant of a long-term lease to the Petitioner. Based on that, the 2nd Respondent directed the 3rd Respondent to hold a fresh inquiry. According to the 7th respondent, the Petitioner had not participated in the said inquiry. Thereafter, the Petitioner was informed by letter dated 27.06.2022, to participate in another inquiry on 21.07.2022. Through his lawyer, the Petitioner informed that he was unable to be present on that said date. Without considering his application, the 2nd Respondent directed the 4th Respondent to prepare the documents recommending the long-term lease to the 7th Respondent. According to the Petitioner, the decision made by the 2nd Respondent to grant the long-term lease to the 7th Respondent dated 23.03.2022 is arbitrary on the basis that there existed recommendations by previous Land Commissioners (as demonstrated by documents marked P28 and P34) recommending the issuance of the long-term lease to the Petitioner.

The main objection taken by the 1st to 6th Respondents is that the Petitioner is 94 years of age and is not physically capable of developing the land. Therefore, the Assistant Commissioner has recommended that it is not suitable to grant the long-term lease to the Petitioner.

On the direction of this Court on 16.11.2023, the report of the Commissioner General of Lands dated 04.11.2023 which is marked as R15 was submitted. According to the said report, the 2nd Respondent based his recommendation on the following grounds:

“ඒ අනුව පෙත්සම්කරු වෙත එම ඉඩම ලබා නොදීමට හේතු ලෙස පහත කරුණු ඉදිරිපත් කරමි.

i. පෙත්සම්කරු නමින් මෙම බලපත්‍රයක් නිකුත් වී ඇති අතර එය 2011.04.07 දිනැතිව අවලංගු කර තිබීම.

ii. 07 වන වග උත්තරකරු ඇතුළු 39 දෙනෙකු සඳහා 2015.11.30 දිනැතිව ඉඩම් කවචේරියක් පවත්වා ඇති අතර ඊට නියමිත කාලය තුල විරෝධතා කිසිවක් ඉදිරිපත් නොවීම.

iii. පෙත්සම්කරු සිය කැමැත්තෙන්ම 07 වන වග උත්තරකරු වෙත දීර්ඝ කාලීන බදු ලබාදීමට කාර්යාලයට පැමිණි එකගතාවය ලබාදුන් බව කල්මුනේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ඉඩම් නිලධාරී විසින් සාක්ෂි දැරීම.

iv . පෙත්සම්කරු එසේ කැමැත්ත ලබා නොදුන් බව පැවසුවද ඔහුගේ අත්සන සහිත ලබාදුන් ප්‍රකාශ ප්‍රාදේශීය ලේකම් කාර්යාලය සතුව තිබීම .

v . පෙත්සම්කරු වයස අවුරුදු 94ක පුද්ගලයෙකු වීම සහ මෙම බලපත්‍ර ඉඩම හා යාබද ඉඩමේ පිහිටි අනෙක් ව්‍යාපාරික ස්ථානය සිය බාල පුතා වෙත ලබා දී ඔහු සමඟ ජීවත් වන අතර දීර්ඝ කාලීන බදු බලපත්‍රයක් ලබා ඉඩම සංවර්ධනය කිරීමට ඔහුට හැකියාවක් නොමැති බවට සහකාර ඉඩම් කොමසාරිස් නිර්දේශ කර තිබීම.”

The fact remains that, originally, the land was conferred on the Petitioner by an annual permit. He had developed the land by constructing a three-storeyed building. Thereafter, the Petitioner requested the Respondents to convert the annual permit to a long-term lease. The Petitioner denies ever having consented to the 7th Respondent obtaining a long-term lease.

Even if we presume the Petitioner has consented to transfer the said permit to 7th Respondent, there is nothing to prevent him from changing his mind and refusing the transfer in respect of the portion of land that forms the subject matter of his annual permit or under which permit he occupies the land.

Section 53 of the Land Development Ordinance reads as follows.

“53. Cancellation of nominations

Any nomination of a successor may at any time be cancelled by the owner or permit-holder who made such nomination.”

One of the reasons given by the Respondents was that, since the Petitioner is an elderly man, he cannot develop the land. The question arises, whether this consideration is relevant.

It is established law that failure to consider a relevant consideration or the consideration of an irrelevant consideration is tantamount to an illegality. Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971] 2 QB 175 at 190 held:

“The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless, the decision will be set aside.”

Further, the failure to consider a relevant consideration, or the consideration of an irrelevant consideration is considered as unreasonable in the ‘umbrella’ or general sense of the term ‘unreasonable’. As famously held by Lord Greene in the evergreen judgment of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, 1948 1KB 223:

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word " unreasonable" in a rather comprehensive sense. **It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He**

must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting " unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in *Short v. Poole Corporation* (I) gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another....." [emphasis added]

As a matter of academic interest, the weight to be attributed to the consideration is a matter for the relevant authority. If there is an exercise of power found to be unreasonable in the substantive sense of 'unreasonableness' (that is, the true 'Wednesbury Unreasonableness', meaning, 'something so absurd that no sensible person could ever dream that it lay within the powers of the authority') it is then that this Court can interfere on the ground of 'Wednesbury Unreasonableness'. This interplay between the doctrine of relevant/irrelevant considerations and 'Wednesbury Unreasonableness' was made clear in the House of Lords' judgment of Tesco Stores v. Secretary of State for the Environment [1995] 2 All ER 636. Lord Keith at p. 642 held:

"It is for the courts, if the matter is brought before them, to decide what is a relevant consideration. If the decision-maker wrongly takes the view that some consideration is not relevant, and therefore has no regard to it, his decision cannot stand and he must be required to think again. But it is entirely for the decision-maker to attribute to the relevant considerations such weight as he thinks fit, and the courts will not interfere unless he has acted unreasonably in the *Wednesbury* sense (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1947] 2 All ER 680, [1948] 1 KB 223)"

In the present application, we observe that in the face of the recommendations made by the previous authorities to grant the long-term lease to the Petitioner, and the Petitioner's refusal to consent to granting a long-term lease to the 7th Respondent, the 2nd Respondent's rejection of the Petitioner's application for a long-term lease on the

consideration that the Petitioner is too old is irrelevant. Accordingly, the decision is unlawful.

We note that the statute does not appear to require age to be a consideration in deciding such applications. Had the provisions of the statute been capable of such inference, age would not have amounted to an irrelevant consideration.

Therefore, we quash the recommendation made by the 5th Respondent in his purported letter dated 23.03.2022 recommending the grant of a long-term lease to the 7th Respondent for the land which was given to the Petitioner in 1976 under the Annual Permit bearing No. AM/KP/AL/144.

Accordingly, we issue writs of Certiorari as prayed in prayers (c) and (d), and writs of mandamus as prayed in prayers (f) and (g). We order costs.

Before I part with judgment, let me also add the following.

When this case was argued on 30.07.2024, we directed the Learned State Counsel appearing for the 1st to 6th Respondents to see whether the said Respondents have considered the documents P28, P34 and P53 before drafting the Report marked R15. The Learned Counsel for the said Respondents filed a motion on 30.08.2024 annexing the reply given to them by Bandula Jayasinghe, the 2nd Respondent who is the Commissioner General of Lands. According to the said letter, he has admitted the following:

“උක්ත කරුණු මත P 28, P 34 හා P 53 දරන ලේඛන වල කරුණු සලකා බලා නොමැති බවත්, 07 වන වග උත්තරකරුවන් නමින් දීර්ඝ කාලීන බදු ලබා දීම ප්‍රාදේශීය ලේකම් සහ පළාත් ඉඩම් කොමසාරිස් විසින් අවසන් වරට නිර්දේශ කර ඇති නිසාත් ඒ අනුව කාර්යාල පරීක්ෂණයක් පවත්වා 2023.01.04 දිනැති වාර්තාව සකස් කර ඇත.”

This response shows the 2nd Respondent's disregard for this Court's direction. The said document marked R15 was prepared at the direction of this Court. It should be noted that the 2nd Respondent is a public officer who holds a responsible position in the administration of State Lands. This response, to one's sheer displeasure, speaks gravely about the 2nd Respondent's attitude towards the Court. In the absence of any justifiable explanation as to why the said documents were not considered when those were

specifically directed to be considered, we see it fit to order the 2nd Respondent, namely, Mr. K.D. Bandula Jayasinghe, the Commissioner General of Lands, to pay Rupees Fifty Thousand (Rs. 50,000/-) out of his personal funds to this Court within a period of one month from the date of this judgment.

We direct the Registrar to send this judgment to the 2nd Respondent for his information.
Application allowed.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL