

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

Rani Adhikari,
“Adhirani”, Hiripitiyagama,
Ipalogama.

And:

“Adhirani”, No.153/6,
Dutugemunu Street,
Kohuwala.

Petitioner

CASE NO: CA/WRIT/52/2016

Vs.

1. Ruwan Wijesinghe,
Divisional Secretary,
Nuwaragam Palatha East,
Anuradhapura.
2. Provincial Land Commissioner,
North Central Province,
Provincial Land Commissioner’s
Department,
Anuradhapura.

3. Divisional Secretary,
District Secretariat,
Anuradhapura.
4. Minister of Lands,
“Mihikatha Medura”,
Land Secretariat,
No.1200/6, Rajamalwatta
Avenue,
Battaramulla.
5. Land Commissioner General,
Land Commissioner General’s
Department,
No.1200/6, Rajamalwatta
Avenue,
Battaramulla.
6. Prema Bandara,
No.85, Harischandra Mawatha,
Anuradhapura.
7. Dammika Semasinghe,
No.600, Airport Road,
Anuradhapura.
8. Champa Sumithra Arachchi,
Kada Panaha,
Anuradhapura.
9. Chathura Indula Bandara
Jayasinghe,
No.85, Harischandra Mawatha,
Anuradhapura.

10. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Vidura Ranawaka with Menaka Warnapura
for the Petitioner.
Vikum de Abrew, S.D.S.G., for the 1st, 2nd, 4th,
5th and 10th Respondents.
Rohan Sahabandu, P.C., with Hasitha
Amarasinghe for the 6th and 8th Respondents.

Argued on: 22.07.2020

Decided on: 02.09.2020

Mahinda Samayawardhena, J.

The subject matter of this application is Lot 1031, as depicted in the Plan marked 1R1. This Lot abuts Lot 1032, which was given to the Petitioner on a long lease by the State. The Petitioner states she had been in possession of both Lots as one unit until she was forcibly evicted from Lot 1031 on 03.06.2015 by her political rivals.

By P14 issued by the 3rd Respondent, it is clear a decision was taken to alienate 20 perches of Lot 1031 to the 9th Respondent

and 29 perches to (the Anuradhapura branch of) the All Ceylon Buddhist Congress (hereinafter referred to as the Buddhist Congress) on a preferential basis. Subsequent documents such as V7 and V8 go to show that an extent of 30.08 perches was identified to be alienated to the Buddhist Congress.

By P18, the 1st Respondent claims to have alienated the said portion to the Buddhist Congress, in accordance with the established procedure for disposing of State lands.

It is an admitted fact that the 6th-8th Respondents, who are said to be office-bearers of the Buddhist Congress, were allowed by one or several of the 1st-5th Respondents to construct a permanent building on Lot 1031. The construction of the building had accordingly commenced but was stopped due to the filing of this application.

The fact that such a decision was taken has been admitted by *inter alia* the 6th and 8th Respondents in paragraph 25 of the statement of objections.

V6 issued by the 1st Respondent goes to show that Lot 1031 had been in the unauthorised possession of the Petitioner when the decision was taken to set apart 30.08 perches to the Buddhist Congress – *vide* V7.

By V7, the 1st Respondent also informed the Municipal Commissioner of the Anuradhapura Municipal Council that ownership of the land lies with the Buddhist Congress.

The Petitioner does not seek a writ of mandamus directing the 1st-5th Respondents to take steps to alienate Lot 1031 to the Petitioner on a long lease or otherwise.

By filing this application, the Petitioner seeks to quash by certiorari the decisions of the 1st-5th Respondents to alienate Lot 1031 to the 9th Respondent and/or the All Ceylon Buddhist Congress-Anuradhapura branch without following the proper procedure, and direct the said Respondents by mandamus to follow the procedure laid down in the Land Manual for the disposing of State lands on preferential basis.

As a public-spirited citizen keen to see the law obeyed by all in the interest of all, the Petitioner has *locus standi* to maintain this application – *vide Wijesiri v. Siriwardena [1982] 1 Sri LR 171*.

Section 199 of the Land Manual *inter alia* sets out the procedure to be followed in such alienations. This section has been produced marked P22. In summary, according to this section, on the written sanction of the subject Minister, when lands are identified to be alienated on a preferential long lease basis, such a proposal shall be gazetted so as to notify the general public that they may object to such a move. The Minister shall take a final decision only after considering the objections, if any, of the public. Possession of the land cannot be handed over until such steps are taken.

The Respondents do not say section 199 is inapplicable in this instance or that the said procedure was followed before delivery of possession of the land to the 6th-9th Respondents.

Instead, learned Senior Deputy Solicitor General appearing for the 1st-5th Respondents informed the Court at the argument that the said Respondents will follow the stipulated procedure before executing the long lease. This means the 1st-5th Respondents have not complied with the proper procedure in handing over possession of Lot 1031 or part of it to the 6th-9th Respondents to construct a permanent building thereon. This is *ultra vires*. State lands cannot be alienated on long lease without following the proper procedure; failure to do so is a violation of the Public Trust doctrine – *vide Sugathapala Mendis v. Chandrika Kumaratunga [2008] 2 Sri LR 339 at 352*.

I grant the reliefs to the Petitioner as prayed for in paragraphs (b)-(f) and (i) of the prayer to the petition.

The application of the Petitioner is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal