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

In the matter of an Application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for Writs in the nature of Certiorari and Mandamus.

CA (Writ) Application No: 275/2018

Ratnayake Arachchige Karunasena,
Punchi Madavwa,
Beragama,
Ambalantota.

PETITIONER

Vs.

1. Sri Lanka Mahaweli Authority,
   No. 500, T.B. Jaya Mawatha,
   Colombo 10.

2. Block Manager,
   Sri Lanka Mahaweli Authority,
   Mayurapura,
   Embilipitiya.

3. Divisional Secretary,
   Divisional Secretariat,
   Hambantota.

4. Warapitage Anil Kumara,
   Maha Ara, Near School,
   Beragama,
   Ambalantota.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Lukshman Amerasinghe with Nandana Malkumara for the Petitioner

Suranga Wimalasena, Senior State Counsel for the 1st – 3rd Respondents

W. Dayaratne, P.C., with Nadeeka Arachchi for the 4th Respondent

Written Submissions: Tendered on behalf of the Petitioner on 15th July 2019 and 24th June 2020.

Tendered on behalf of the 1st – 3rd Respondents on 27th June 2019

Tendered on behalf of the 4th Respondent on 22nd January 2020

Decided on: 4th September 2020

Arjuna Obeyesekere, J

The Petitioner has filed this application, seeking *inter alia* the following relief:

(a) A Writ of Certiorari to quash the permit marked '**P1A**' issued by the 1st Respondent, the Mahaweli Authority of Sri Lanka to the 4th Respondent;

(b) A Writ of Mandamus directing the 1st Respondent to issue the Petitioner a permit in respect of the land referred to in '**P1A**' which is occupied by the Petitioner.

The facts of this matter very briefly are as follows.

The Petitioner claims that in 1989 the 3rd Respondent, the Divisional Secretary, Hambantota had issued the Petitioner a permit in terms of Section 19(2) of the Land Development Ordinance in respect of a land situated in Hambantota. While a copy of the said permit has been marked '**P1B**', it is not in dispute that the Petitioner does not have the original of the said permit,

with the Petitioner claiming that he had handed over the original to the 1st Respondent. The Petitioner states that in 2008, the 1st Respondent had issued the 4th Respondent the permit marked '**P1A**' in terms of Section 19(2) of the Ordinance, in respect of the same land.

The Petitioner claims that he was in possession of the said land at the time '**P1A**' was issued and that the said land was cultivated by the Petitioner. He claims further that after '**P1A**' was issued, the 4th Respondent had tried to forcibly enter the land, but as the Petitioner refused to yield possession, the 4th Respondent had filed a *Rei Vindicatio* action in the District Court of Hambantota, against the Petitioner. The Petitioner admits that judgment was entered against him, and that his appeal to the Provincial High Court of Civil Appeal of the Southern Province had been dismissed. The Petitioner had thereafter sought Special leave to Appeal from the Supreme Court, but leave had been refused by the Supreme Court.

The Petitioner states that by a letter dated 22nd June 2009 marked '**P1C**', the 3rd Respondent had confirmed that the permit issued to him is genuine. The Petitioner states further that even at the time this application was filed, he was in possession of the said land, and that he is therefore entitled to a fresh permit in respect of the said land under the provisions of the Land Development Ordinance.

The 1st Respondent states that by a notice published in terms of Section 3(1) of the Mahaweli Authority of Sri Lanka Act No. 23 of 1979 in Gazette No. 137 dated 16th April 1981, marked '**R6**', the Minister of Mahaweli Development had declared a vast tract of land in Hambantota as a 'Special Area' for the purposes of the said Act, and that the land in respect of which the Petitioner is seeking a permit is included in the said notice. The 1st Respondent states further that since 1981, the administration of all State land within the area declared in terms of '**R6**' has been under the purview of the 1st Respondent, and for that reason, the District Secretary, Hambantota, who is said to have issued '**P1B**' does not have the power to issue the said permit.

This position has been confirmed by the 3rd Respondent who has stated in his Statement of Objections that the said land comes under the purview of the 1st Respondent, and that there are no records in the Divisional Secretary's Office, Hambantota to show that '**P1B**' has been issued to the Petitioner.

The 1st Respondent states further that pursuant to an application made by the 4th Respondent for the allocation of a State land, the 1st Respondent, by a letter dated 23rd January 2006 marked '**R1**', had invited the 4th Respondent to be present at the Land Kachcheri scheduled for 16th February, 2006. The 1st Respondent, having been satisfied of the eligibility of the 4th Respondent to receive a State land, had informed the Petitioner in July 2007 that he has been selected as a recipient. The list containing the names of those who were selected at the said Kachcheri, including the 4th Respondent, has been marked '**R3**'. The 1st Respondent states that it was only thereafter that the 4th Respondent was issued with the permit marked '**P1A**' in May 2008. A copy of the land ledger relating to the land in dispute, with the name of the 4th Respondent as the holder of the permit has been produced by the 1st Respondent marked '**R5**'.

The Petitioner has produced with the petition marked '**P1**' the appeal brief containing *inter alia* the evidence that was led in the aforementioned District Court case. This Court, having examined the evidence of the 4th Respondent, who was the Plaintiff in that action, observes that the 4th Respondent had come into unauthorized possession of the said land in 1988, and had cultivated the said land thereafter. However, after the decision was taken to issue a permit to the 4th Respondent, the Petitioner had forcibly entered the said land in December 2007 and dispossessed the 4th Respondent, which necessitated the filing of the *Rei Vindicatio* action in May 2008.

This Court has also examined the judgment of the learned District Judge and observes that while the validity of the permit issued to the 4th Respondent has been accepted, the learned District Judge has held that the Petitioner has failed to prove that the permit '**P1B**' had been issued to him, and arrived at the following conclusion:

" ඒ අනුව විත්ති පාර්ශ්වය විසින් විෂය වස්තුවට තමාට හිමිකමක් ඇති බවට ප්‍රමාණවත් පරිදි නීතියෙන් නියම කර ඇති ආකාරයට ඔප්පු කර නොමැති බව මා විසින් තීරණය කරමි "

The learned District Judge had thereafter held as follows:

"පැ. 3 ලේඛනය සම්බන්ධයෙන් එහි මුල් පිටපත ඉදිරිපත් කර ඔප්පු කර ඇති අතර එය නීකුත් කල ශ්‍රී ලංකා මහවැලි අධිකාරියේ නිලධාරියා විසින් එහි නිත්‍යානුකූලභාවය සනාථ කර ඇත. වි.1 ලේඛනය සම්බන්ධයෙන් එවැනි කිසිදු, සාධනය කිරීමක් නොමැති බැවින් වි.1 ලේඛනය මෙම නඩුවේ විෂය වස්තුව බැහැර කර ඇති අවසර පත්‍රයක් බවට පිළිගැනිම මා විසින් ප්‍රතික්ෂේප කරන අතර එනයින්ම පැ.3 ලේඛනයට ප්‍රථමයෙන් වෙනත් වලංගු ලේඛනයක් මගින් මෙම නඩුවෙ විෂය වස්තුව වෙනත් තැනැත්තෙකුට බැහැර කර තිබුනේද යන්න පිළිබඳව මෙහිදී සලකා බැලීමේ නෛතික අවශ්‍යතාවයක් නොමැති බවද තීරණය කරම්. ඒ අනුව විත්ති පාර්ශ්වය තමන්ට විෂය වස්තුවේ සන්තකය දැරීම සඳහා නිත්‍යානුකූල අයිතිවාසිකමක් ඇති බවට ඔප්පු කර නොමැති බව මා විසින් තීරණය කරම්.

ඉහතින් විස්තර කරන ලද ආකාරයට මෙම නඩුවේ පැමිණිලි පාර්ශ්වය ප්‍රබල ලේඛනමය සාක්ෂි මගින් තමන්ට විෂය වස්තුවට ඇති අයිතිවාසිකම ඔප්පු කර ඇති බැවින් සහ විත්ති පාර්ශ්වය තමන්ට විෂය වස්තුවේ සන්තකය දැරීමට නිත්‍යානුකූල අයිතියක් ඇති බවට ඔප්පු කර නොමැති බැවින් පැමිණිලිකරු මෙවැනි නඩුවක ඔප්පු කිරීමේ භාරය වැඩිබර සාක්ෂි මත සාධනය කර ඇති බව තීරණය කරම්. ඒ අනුව මෙම නඩුවේ විෂය වස්තුවේ අයිතිවාසිකම සහ භුක්තිය 2008.05.07 දින සිට මෙම නඩුවේ පැමිණිලිකරුට හිමිවිය යුතු බවත් එතැන් සිට පැමිණිලිකරුගේ නිත්‍යානුකූල භුක්තියට බාධා කරමින් විත්තිකරු එහි රුදී සිටීම මගින් පැමිණිලිකරුට අයුතු අලාභයක් සිදුකර ඇති බවත් තීරණය කරම්."[1]

The following issue raised by the Petitioner had been answered in the negative by learned District Court:

"මෙම නඩුවට අදාල ඉඩම් කැබැල්ල සම්බන්ධව හම්බන්තොට නියෝජ්‍ය ඉඩම් කොමසාරිස්/අතිරේක දිසාපති (ඉඩම්) විසින් 1989.03.17 දින ඉඩම් සංවර්ධන ආඥාපනතේ 19 (2) වගන්තිය යටතේ නීකුත් කරනු ලැබූ එල්.එල්. 63464 දරණ අවසර පත්‍රයක් මත විත්තිකරුට ලබා දී ඇත්තේද? "

It is in the above circumstances that the Petitioner has invoked the jurisdiction of this Court, seeking the aforementioned relief, with the principle argument

[1] The permit issued to the 4th Respondent (P1A) had been marked as P3 before the District Court, while the permit said to have been issued to the Petitioner (P1B) had been marked as V1 before the District Court.

of the Petitioner being that the 1st Respondent could not have issued a permit to the 4th Respondent while the permit issued to the Petitioner was in existence. The question that this Court must therefore consider is whether the 1st Respondent acted in terms of the law when it issued the permit '**P1A**' to the 4th Respondent.

In **Council of Civil Service Unions vs Minister for the Civil Service**[2], Lord Diplock stated that:

> "*Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.*
>
> *"By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*"

This Court is of the view that the permit marked '**P1A**' has been issued to the 4th Respondent in terms of the Ordinance, and that it is therefore not liable to be quashed by a Writ of Certiorari, for the following reasons:

a) The 1st Respondent has followed the provisions of the Ordinance in selecting the 4th Respondent as a beneficiary of the State land referred to in '**P1A**';

b) According to the records maintained by the 3rd Respondent, there is no evidence of a permit having been issued to the Petitioner;

[2] 1985 AC 374

c) The disputed land falls within an area which has been administered by the 1st Respondent since 1981, and even if '**P1B**' is genuine, the 3rd Respondent did not have the authority to issue a permit to the Petitioner;

d) In any event, the Petitioner does not possess the original of the permit issued to him and his claim to the said land has been rejected by a Court of Law.

It is trite law that for a Writ of Mandamus to issue, a petitioner must establish that he has a legal right and that the Respondents have a corresponding legal duty. As held by the Supreme Court in **Ratnayake and Others vs C.D.Perera and others**:[3]

> "*The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest.*"

For the reasons set out earlier, this Court is of the view that the Petitioner has not established that he has a legal right to be issued a permit in terms of the Ordinance, and is therefore not entitled to a Writ of Mandamus.

There is one other matter that this Court must advert to. The Respondents have taken up the position that the Petitioner is guilty of *laches*, in that this application has been filed in August 2018, whereas the permit '**P1A**' had been issued in May 2008. The Petitioner has explained the delay on the basis that he had to defend the District Court action, prior to challenging the validity of the permit issued to the 4th Respondent. While there is no doubt that there has been a long delay in invoking the jurisdiction of this Court, and that this

[3] (1982) 2 Sri LR 451.

application is liable to be dismissed for delay if the explanation for the delay in not accepted by this Court, the necessity for this Court to consider the said explanation does not arise in view of the conclusion that this Court has arrived at on the merits of this application.

This application is accordingly dismissed, without costs.

Judge of the Court of Appeal