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

In the matter of an application in the nature of Writs of Certiorari, Mandamus and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA(Writ) Application No: 329/2013

Samawathie Menike Liyanagedera,
Moragaswewa, Habarana.

Petitioner

Vs.

1. Divisional Secretary,
   Divisional Secretariat,
   Hingurakgoda.

2. Provincial Commissioner of Lands,
   Provincial Lands Commissioner's
   Department, North Central Province,
   Anuradhapura.

3. Land Commissioner General,
   Land Commissioner General's Department,
   No. 1200/6, Mihithala Madura,
   Rajamalwatta Road, Battaramulla.

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

5. Dissanayake Liyanagedera,
No. 12, Kaduruwela, Polonnaruwa.

Respondents

Before: **Arjuna Obeyesekere, J**

Counsel: Ananda Kasthuriarachchi for the Petitioner

Indula Ratnayake, State Counsel for the 1st – 4th Respondents

Rasika Wellappili for the 5th Respondent

Written Submissions: Tendered on behalf of the Petitioner on 29th August 2018

Tendered on behalf of the 1st - 4th Respondents on 2nd October 2018

Tendered on behalf of the 5th Respondent on 25th October 2018

Decided on: 06th March 2019

Arjuna Obeyesekere, J

When this matter was taken up for argument on 26th June 2018, the learned Counsel for all parties moved that this Court pronounce its judgment on the written submissions that would be tendered by the parties.

By an amended petition filed on 17th December 2013, the Petitioner has sought *inter alia* the following relief:

a) A Writ of Certiorari to quash the decisions reflected in the documents annexed to the petition, marked '**P12**'[1], '**P15**'[2] and '**P18**'[3];

b) A Writ of Prohibition restraining the 1st – 3rd Respondents from cancelling the permit issued to the Petitioner under the provisions of the Land Development Ordinance annexed to the petition, marked '**P9**';

c) A Writ of Mandamus directing the 1st – 3rd Respondents to amend the extent of the land which has been given to the Petitioner in terms of '**P9**'.

The facts of this matter very briefly are as follows.

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[1] 'P12' is an order dated 5th March 2012 issued by the 1st Respondent in terms of Section 110 of the Land Development Ordinance cancelling the permit issued to the Petitioner.

[2] 'P15' is a letter dated 2nd May 2012 issued by the 1st Respondent setting out the agreement that had apparently been reached between the Petitioner and the 5th Respondent at a meeting held on 25th April 2012.

[3] 'P18' is a letter dated 12th July 2013 issued by the 2nd Respondent cancelling the permit issued to the Petitioner.

The Petitioner states that on or around 1st March 1940, her father, Bandi Ralalage Tikiri Appu had been issued a permit in terms of the Land Development Ordinance (the Ordinance). A copy of the said permit has been produced by the 1st Respondent marked '**1R1**'. The land ledger relating to this permit has been produced by the 1st Respondent, marked '**1R2**'. In terms of '**1R2**', Tikiri Appu had been given the said permit in respect of Lot No. 23 in Final Village Plan No. 884, containing in extent of 2R. Although the Petitioner has annexed to the petition marked '**P1**', a copy of Supplement No. 3 to FVP No. 884 prepared in 1990, a copy of FVP No. 884 prepared at the time the permit was executed in 1940 has not been submitted by either party.

The Petitioner states that Tikiri Appu changed his name to Tikiri Banda Liyanagedara and that the said change of name was effected on 12th June 1968, as borne out by the endorsement on the reverse of '**P3A**', which is the birth certificate of Tikiri Appu.

The Petitioner states that Tikiri Appu had married Gunaratne Menike in 1961 but that the marriage had been registered only in March 1967. The Petitioner, who is the only child of Tikiri Appu and Gunaratne Menike, states that from the time she was born, she had been living on the land which is the subject matter of this application. This position has been challenged by the 5th Respondent who has produced the electoral list for the years 2006 – 2013 which shows that the Petitioner and her family had been registered at another address.[4]

[4] Extracts of the Electoral register have been annexed to the petition, marked '5R(15)(i)' – '5R15(viii)'.

Tikiri Appu had passed away in 1973 without nominating a successor. It appears from a letter dated 28th June 2005 written by the Petitioner that the request made by Guneratne Menike for a permit had not been acceded to and that the permit issued to Tikiri Appu had been cancelled on 20th May 1998. This letter has been produced by the 1st Respondent marked '**1R3**'. Be that as it may, the Petitioner claims that Guneratne Menike and the Petitioner had continued to live on the said land and that she and her husband, Ratnasiri Weragoda has developed the said land and built a house thereon.

According to the Petitioner, the Surveyor General's Department had carried out a survey of the entire village in 1989. The Petitioner claims that the land which was given to Tikiri Appu on the said permit is depicted as Lot No. 152 on Supplement No. 3 of FVP No. 884 '**P1**'.

Guneratne Menike had passed away on 18th April 2004. The Petitioner had submitted the aforementioned letter '**1R3**' together with an affidavit of the same date, affirming that she is the only child of Tikiri Appu and had requested that she be issued a permit in respect of the said land. The request made by the Petitioner that she be recognized as the successor of Tikiri Appu had been acted upon, as her name was substituted as the permit holder on 6th August 2007. The permit annexed to the petition marked '**P9**' had thereafter been issued to the Petitioner.

This Court observes that the land given under the permit '**P9**' has been identified in '**P9**' as Lot No. 23 containing in extent 2R. As observed earlier, the land given to Tikiri Appu was Lot No. 23 of FVP 884, and '**P9**', although issued in 2007, does not

have a reference to '**P1**'. According to the Supplementary Tenement List produced by the 1st Respondent marked '**1R15A**', the extent of Lot No. 152 is 0.434 hectares [1A 0R 6P]. Thus, on the face of it, there is a discrepancy between the extent of the land given in the land ledger '**1R2**' and the permit '**P9**' as opposed to the extent given in the Supplementary Tenement List '**1R15A**'.

The Petitioner states that by two letters written in June 2008, she brought to the attention of the 1st Respondent the discrepancy in the permit with regard to the extent of the land. It appears that the Respondents have not taken any steps in this regard. However, an endorsement has been made on '**1R15A**' that Lot No. 152 had been cultivated by the Petitioner and that the land has been identified for the issuing of a grant.

The dispute culminating in the issuance of '**P18**', by which the 2nd Respondent cancelled the permit '**P9**' appears to have commenced in the latter part of 2011, when the 5th Respondent, by a letter dated 8th August 2011[5] informed the 1st Respondent that he is the eldest son of Tikiri Appu by a previous marriage of Tikiri Appu and requested that he be issued the permit in respect of the said land.

By a notice dated 26th December 2011,[6] the 1st Respondent had informed the Petitioner that she has violated the conditions of the permit issued to her[7], and requested the Petitioner to appear before him on 29th February 2012 and show cause as to why the permit should not be cancelled. This Court observes that

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[5] A copy of this letter has been produced by the 1st Respondent marked '1R5A'

[6] A copy of this notice has been produced by the 1st Respondent marked '1R8'.

[7] According to '1R8', the Petitioner has violated two conditions, namely, පදිංචිය අතහැරයාම සහ සංවර්ධනය නොකිරීම.

Section 106 of the Land Development Ordinance[8] provides for such a course of action and to that extent, the issuing of the said notice by the 1st Respondent is within the law.

In terms of Section 110(1) of the Ordinance,[9] once a notice is sent under Section 106 and the permit holder is ready to show cause, the 1st Respondent is required to conduct an inquiry where the permit holder is granted an opportunity of showing cause as to why the permit should not be cancelled. It appears from the notes of the inquiry held on 29th February 2012 produced marked '**1R9**', that the Petitioner had produced electricity and water bills to prove her residence but that the focus of the inquiry was on the request of the 5th Respondent that the permit be issued to him.

Be that as it may, the 1st Respondent had issued an Order dated 5th March 2012, annexed to the petition marked '**P12**' cancelling the permit issued to the Petitioner on the basis that she has violated the conditions of the permit by not developing the land and abandoning the land.

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[8] Section 106 reads as follows: "If it appears to the Government Agent that a permit-holder has failed to observe a condition of his permit, the Government Agent may issue a notice in the prescribed form intimating to such permit-holder that his permit will be cancelled unless sufficient cause to the contrary is shown to the Government Agent on a date and at a time and place specified in such notice."

[9] Section 110(1) reads as follows: "If on the date and at the time and place specified in a notice issued under section 106 or appointed by the Government Agent under section 109 (2) the permit-holder appears and offers to show cause why his permit should not be cancelled, the Government Agent may, if he is satisfied after inquiry that there has been a breach of any of the conditions of the permit, make order cancelling the permit."

At this stage, it would be appropriate to consider the judgment of this Court in **Rajapakshage Dharmasiri Ranasinghe vs. Commissioner General of Lands**[10], where this Court held as follows:

> "By virtue of section 110 of the Ordinance it becomes incumbent upon the 2nd Respondent to consider intently the material that would be adduced by those who are concerned in the matter. A specific procedure in that regard has been set out in the Ordinance. There is no material or basis for this Court to conclude that the 2nd Respondent has complied with that procedure."

Even in this application, there is no material to indicate that the 1st Respondent considered the material submitted by the Petitioner to rebut the grounds urged by the 1st Respondent in '**1R8**'. Thus, on this ground alone, '**P12**' is liable to be quashed by a Writ of Certiorari. Although the reasons given in '**P12**' to cancel the permit was the non-development and non-occupation/abandonment of the land by the Petitioner, the 1st Respondent in paragraph 12 of his affidavit dated 28th January 2016 submitted to this Court, has sought to justify the issuance of '**P12**' on the basis that the Petitioner had submitted a false affidavit dated 28th June 2005, stating that she is the only child, but that upon it being discovered that the said statement is false, the 1st Respondent proceeded to have an inquiry on the 29th of February 2012. However, if one looks at '**1R8**', which is the intimation to the Petitioner that the Petitioner has breached the conditions of the permit and that an inquiry would be held on 29th February 2012, it is clear that no mention

[10] CA(Writ) Application No.136/ 2013; CA Minutes of 8th August 2016 – Surasena, J (as he then was).

has been made of the Petitioner having obtained the permit by making false representations. Thus, the bona fides of the 1st Respondent are in doubt, especially in the context of the allegations made by the Petitioner that the 5th Respondent used political influence on the Respondents to issue a permit in his name.

Section 113 of the Ordinance provides that a "permit-holder aggrieved by an order made by the Government Agent under section 110 may appeal therefrom to the Land Commissioner." The Petitioner had accordingly submitted an appeal to the 2nd Respondent, Provincial Land Commissioner regarding the cancellation of the permit for non-development and non-occupation.[11]

The 2nd Respondent, acting on the said appeal, had requested the 1st Respondent by his letter dated 4th April 2012 annexed to the petition marked '**P14**' to suspend the decision contained in '**P12**' until the 2nd Respondent holds an inquiry into the said appeal. The 2nd Respondent had thereafter sent a letter dated 27th August 2012 to the 1st Respondent with copy to the Petitioner and the 5th Respondent. This letter, which has been annexed to the Petition, marked **'P16'** reads as follows:

> "උක්ත කරුණ සම්බන්ධයෙන් ඔබ විසින් මා වෙත එවා ඇති ඔබගේ අංක එන්සිපි/එම්පි/එල්5/8/29/13 හා 2012.05.31 දිනැති ලිපිය හා බැඳේ.
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> 1. අදාළ ඉඩමේ බලපත්‍රකාරීය පදිංචි වී සිටින බවත්,

[11] This letter has been annexed to the petition marked 'P13'. The grounds of appeal relate to what was stated in 'P12'.

2. අදාළ අවලංගු කිරීම්වලට අදාළ මූලික පියවර වන 106 යටතේ නිවේදන නිකුත් කර නොමැති බවත්,
3. 110 නිවේදන පනතේ නියෝගවලට අනුකූල නොවන අයුරින් නිකුත් කර ඇති බවත්, පෙනියයි.

02. එහෙයින් අවලංගු කිරීමේදි අනුගමනය කර ඇති පියවර පනතට පටහැනි හා සාවද්‍ය වන බැවින්, එහි අවලංගු කිරීම බල රහිත කර බලපත්‍රය වලංගු කරන ලෙස ද, බලපත්‍රයට ආදාළ මිණුම් ප්‍රමාණයට වඩා වැඩි බිම් කොටසක් පවතිනම් එකී අයිතින් වැඩිපුර මිණුම් කොටස නෛතික අයිතින් සපුරා ඇත්නම් ප්‍රති පාර්ශවයට ලබාදීම සුදුසු බවත්, ඒ සඳහා කටයුතු කිරීමේදි ඒ පිලිබඳව අපගේ විශේෂ අවසරය ලබා ගැනිමට පියවර ගන්නා ලෙසත් දන්වා සිටිම්.

03. එසේම මේ පිලිබඳව අනෙක් පාර්ශවය අගතියට පත්වේ නම්, හා ඒ සඳහා ඔහුට නිමිකමක් වේ නම් සුදුසු අධිකරණ ක්‍රියා මාර්ගයක් ගැනිමට ඔහු දැනුවත් කරන ලෙසද ගොනු ලිපි අංක 56 අදාළ පරීක්ෂණය පැවැත්වූ නිලධාරියා පිළිබඳව තොරතුරු මා වෙත දන්වා එවන ලෙසත් කාරුණිකව දන්වා සිටිම්."

It is clear that the reference in '**P16**' to the 'Section 110' notice is to '**P12**', which is one of the documents that the Petitioner is seeking to quash in this application. The learned State Counsel has conceded in his written submissions that the 2nd Respondent has already concluded in '**P16**' that '**P12**' had been issued without following the procedure set out in the Ordinance and that by the letter '**P16**', the 2nd Respondent has invalidated '**P12**'. The learned State Counsel has therefore submitted that it is not necessary for this Court to make a determination regarding '**P12**'.

Thus, any grievance of the Petitioner with regard to the order of cancellation '**P12**' ought to have come to an end once '**P12**' was set aside by '**P16**'. This was however not to be, as the 2nd Respondent, almost a year later, cancelled the permit issued to the Petitioner by the letter '**P18**'. Prior to considering whether '**P18**' is liable to be quashed by a Writ of Certiorari, there is one other letter that this Court needs to consider.

While the appeal made by the Petitioner against '**P12**' was pending with the 2nd Respondent, the 1st Respondent had conducted an 'inquiry' on 25th April 2012 with the participation of the Petitioner and the 5th Respondent. This Court observes that the 1st Respondent, having issued '**P12**' did not have the power to conduct a further inquiry, nor has the 1st Respondent explained in the affidavit filed before this Court the necessity to conduct an inquiry after **'P12'** had been issued by him. Be that as it may, the 1st Respondent by a letter dated 2nd May 2012 annexed to the petition marked '**P15**', has informed the Petitioner and the 5th Respondent the 'agreement reached' at the inquiry held before him on 25th April 2012 in the following manner:

> "11. එස්. එම්. ලියනගෙදර යන අය වෙත නිතුත් කර ඇති අංක 11/මොරගස්වැව දරණ බලපත්‍රය අවලංගු කර, එකී බලපත්‍ර ඉඩමේ තමාට හිමිව තිබූ රුඩ් 02 ක ප්‍රමාණය සඳහා ඇයගේ අයිතියට අගතියක් නොවන පරිදි ඉඩම් කව්වේරියකට ඉදිරිපත් වී නිත්‍යානුකූල හිමිකම් ලබා ගැනීම.
>
> 111. එස්. එම්. ලියනගෙදර යන අය වෙත රුඩ් 02ක ඉඩම් කොටසක් ලබා දීමෙන් පසු ඉතිරිවන ඉඩම් කොටස, තම නෛතික අයිතින් සපුරා ඇත්නම්, ප්‍රතිපාරගවය වන ඩී. ලියනගෙදර යන අයට ලබා දීමට සලකා බැලීම.

02. ඉහත ගන්නා ලද තීරණයන් සඳහා දෙපාර්ශවය විසින් තම එකඟතාවයන් පල කල හෙයින්, අංක 11/මොරගස්වැව බලපත්‍රය අවලංගු කරන බව මෙයින් දැනුම් දෙමි. ඒ අනුව කටයුතු කිරීම සඳහා අංක 11/මොරගස්වැව බලපත්‍රය මා වෙත ලබා දෙන ලෙසත්, ඉන්පසු ඉහත එකී ඉඩමෙහි නිත්‍යානුකූල අයිතිය ලබා ගැනීම සඳහා ඉදිරියේදි පැවැත්වීමට නියමිත ඉඩම් කච්චේරි සඳහා ඉදිරිපත් වීමට මේ සමඟ අමුණා ඇති අයදුම්පත සම්පූර්ණ කර අංක 29 මොරගස්වැව ග්‍රාම නිලධාරි මහතා වෙත භාර දෙන මෙන් කාරුණිකව දන්වමි."

The Petitioner has denied that she agreed to the aforementioned settlement. The learned State Counsel has taken up the position in his written submissions that the decision in **'P15'** has not been given effect to and that in any event, the said decision has been superseded by the decision of the 2nd Respondent, contained in '**P18**'. This Court takes the view that the 1st Respondent was *functus* after having issued '**P12**' and therefore the 1st Respondent conducting the said inquiry on 25th April 2012 and issuing '**P15**' was outside the procedure laid down in the Ordinance and clearly illegal. Therefore, this Court is of the view that '**P15**' is liable to be quashed by a Writ of Certiorari.

This Court will now consider the final document that is sought to be quashed by the Petitioner in this application, namely '**P18**', which is a letter dated 12th July 2013, issued by the 2nd Respondent to the 1st Respondent with copy to the Petitioner and the 5th Respondent. '**P18**' reads as follows:

"උක්ත කරුණ සම්බන්ධයෙන් පොළොන්නරුව, කදුරුවෙළ, කව්වේටි නිවස, අංක 12 යන ලිපිනයෙහි පදංචි ඩී. ලියනගෙදර හා සාමාවති ලියනගෙදර යන අයගේ ඉඩම් ගැටළුව සම්බන්ධවයි.

02. ඒ අනුව ඩී. ලියනගෙදර යන අය ලියනගෙදර බණ්ඩාළගේ ටිකිරි අප්පු හා කපුරුහාමිගේ කළුමැණිකා යන දෙපළගේ වැඩිමහල් පිරිමි දරුවා වන බව පරීක්ෂණවලදී සනාථ විය. එබැවින්, මෙම ගොඩ ඉඩමෙහි නීත්‍යානුකූල අයිතිය ඩී. ලියනගෙදර යන අයට ලබාදීම සම්බන්ධව ඉදිරි කටයුතු සිදු කරන මෙන් කාරුණිකව දන්වා සිටිමි."

The principle grounds on which a Court may issue a Writ of Certiorari has been set out by Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**[12] as follows:

"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'. That is not to say that further development on a case-by-case basis may not in course of time add further groups. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' ....

"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

[12] 1985 AC 374.

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."

"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'[13]. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

There are two issues that arise from '**P18**'. However, prior to considering each of the said issues, it would be important to lay down the procedure set out in the Ordinance with regard to the cancellation of a permit.

[13] Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223.

In terms of Section 110(1) of the Ordinance, "the Government Agent may, **if he is satisfied** after inquiry that there has been a breach of any of the conditions of the permit, make order cancelling the permit." Section 113 of the Ordinance provides that a "permit-holder aggrieved by an order made by the Government Agent under section 110 may appeal therefrom to the Land Commissioner." The mode of preferring an appeal and the time period for preferring an appeal is set out in Section 114 of the Ordinance.

Section 115 of the Ordinance sets out the powers of the 2nd Respondent in determining an appeal and reads as follows:

> "The Land Commissioner may in appeal-
> (a) direct further inquiry to be made or information to be furnished or evidence to be given; or
> (b) allow the appeal and set aside the order of the Government Agent; or
> (c) modify the order of the Government Agent; or
> (d) affirm the order of the Government Agent; or
> (e) make such other order as he may consider just."

This Court has held in **Rajapakshage Dharmasiri Ranasinghe vs. Commissioner General of Lands**[14] that a permit holder is entitled to a hearing at the appeal stage as well.

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[14] Supra.

In terms of Section 116(2) of the Ordinance, "any decision made by the Land Commissioner under section 115 **shall be final and conclusive for all purposes."**

The first issue that arises is whether the 2nd Respondent had the power to issue '**P18**', having already determined in '**P16**' that the issuance of the order cancelling the permit '**P12**' is bad in law. Upon a plain reading of the provisions of Sections 113 and 115 of the Ordinance, this Court is of the view that the 2nd Respondent can exercise the appellate powers vested in him by Sections 113 and 115 only when there is an Order made under Section 110 of the Ordinance in existence. Having exercised that power by '**P16**' and having set aside the Order '**P12**', the 2nd Respondent could not have made any other order or determination arising from the cancellation of the permit '**P12**' as '**P16**' was final and conclusive. This Court takes the view that the 2nd Respondent, having heard the appeal of the Petitioner and having concluded in '**P16**' that the appeal should be allowed, was *functus*. The 2nd Respondent has not explained in the objections filed on his behalf the provision of law under which he acted when he issued '**P18**' or the reasons that led him to issue '**P18**'. In these circumstances, this Court is of the view that the issuance of '**P18**' is *ultra vires* the powers conferred on the 2nd Respondent under the Ordinance and is liable to be quashed by a Writ of Certiorari.

The second issue that arises from '**P18**' is, even if one accepts the position that the 2nd Respondent did have the authority to issue '**P18**', whether the permit holder was entitled to a hearing prior to the cancellation of the permit and if so, whether the 2nd Respondent afforded to the Petitioner a hearing or an opportunity of explaining why the permit should not be cancelled.

The importance of natural justice and why Courts insist upon it are captured by the following paragraphs in '**Administrative Law**' by Wade:[15]

> "Just as the Courts can control the substance of what public authorities do by means of the rules relating to reasonableness, improper purposes, and so forth, so through the principles of natural justice they can control the procedure by which they do it. In so doing they have imposed a particularly procedural technique on government departments and statutory authorities generally. The Courts have in effect, devised a code of fair administrative procedure based on doctrines which are an essential part of any system of administrative justice.
>
> Procedure is not a matter of secondary importance. As governmental powers continually grow more drastic, it is only by procedural fairness that they are rendered tolerable. A judge of the United States Supreme Court has said: 'Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.'[16] One of his colleagues said: 'The history of liberty has largely been the history of the observance of procedural safeguards.'[17]
>
> It is true that the rules of natural justice restrict the freedom of administrative action and that their observance costs a certain amount of

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[15] 'Administrative Law' by H.W.R.Wade and C.F.Forsyth; 11th Edition pages 373 and 374.
[16] Shaughnessy v. United States, 345 US 206 (1953) (Jackson J).
[17] McNabb v. United States, 318 US 332 (1943) (Frankfurter J).

time and money. But time and money are likely to be well spent if they reduce friction in the machinery of government; and it is because they are essentially rules for upholding fairness and so reducing grievances, that the rules of natural justice can be said to promote efficiency rather than impede it. Provided that the courts do not let them run riot, and keep them in touch with the standards which good administration demands in any case, they should be regarded as a protection not only to citizens but also to officials. Moreover, a decision which is made without bias, and with proper consideration of the views of those affected by it, will not only be more acceptable; it will also be of better quality. Justice and efficiency go hand in hand, so long at least as the law does not impose excessive refinements."

The necessity for a party to be heard prior to the cancellation of a permit was considered by this Court in **Kalu Banda vs. Upali**.[18] Even though this judgment applied to an inquiry contemplated under Section 110 of the Ordinance, the principle laid down would apply equally to the present situation as well as when the Land Commissioner is exercising his appellate powers. In **Kalu Banda's** case, the Counsel for the Respondent argued that there was no essential requirement to afford a hearing as the Petitioner had violated one of the conditions to the permit. This Court, disagreeing with this position, held as follows:

"where provision is made by law in regard to the procedure to be followed when cancelling a lease permit granted to a person, there is no reason why such procedure should be ignored or overlooked. Such conduct would be

[18] 1999 (3) SLR 391.

illegal and arbitrary and offend the fair administrative procedure expected from public authorities.

On the other hand, even if there was no provision made for a party to be heard before his lease permit is cancelled, principles of natural justice will supply the omission of the legislature. The reason being that the court will not readily accept the position that the Parliament intended an administrative authority to exercise a discretion vested in it by statute, in such a manner so as to offend the principles of natural justice.

Further, it is worth referring here to the words of Byles, J. in the case of **Cooper v. Wandsworth Board of Works**[19] where he stated that:

". . . a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

In this case, however, the law has very clearly made provision that a hearing should be given to a party before a lease permit is cancelled. The decision taken by the 2nd Respondent to cancel the lease permit granted to the petitioner without giving the petitioner an opportunity to show cause is

[19] (1863) 14 CBNS 180.

arbitrary, unreasonable and in violation of the principles of natural justice. Therefore, the said decision of the 2nd Respondent should be quashed."[20]

The right of a party to be heard prior to a decision affecting his rights being taken even where the Statute is silent on such a requirement, has been confirmed in the following passage from the case of **Lloyd v McMahon**[21]:

"In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

In this application, the 2nd Respondent himself had set aside the Order of the 1st Respondent '**P12**' cancelling the permit. If there was going to be a change to the said decision, for whatever reason, the Petitioner was entitled to be heard, since the Ordinance itself requires that an inquiry be held prior to a decision being taken to cancel a permit. This Court is therefore in agreement with the submission of the learned Counsel for the Petitioner that the 2nd Respondent ought to have afforded the Petitioner a hearing prior to issuing '**P18**'. The failure on the part of the 2nd Respondent to give the Petitioner a hearing is a ground on which '**P18**' is liable to be quashed by a Writ of Certiorari.

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[20] Supra. pages 399-400.
[21] [1987] AC 625 at 702; cited in 'Administrative Law' by Wade and Forsyth; 11th Edition pages 423-424.

In the above circumstances, this Court proceeds to issue a Writ of Certiorari as prayed for in paragraph (b) of the prayer to the petition to quash '**P12**', '**P15**' and '**P18**'.

The Petitioner has sought a Writ of Prohibition restraining the Respondents from cancelling the permit '**P9**' and granting the 5th Respondent a permit in respect of Lot 152 of '**P1**'. The 5th Respondent has placed material before this Court in support of his position that he is a son of Tikiri Appu. Section 72 of the Ordinance provides that if no successor has been nominated, the title to the land alienated on a permit shall, upon the death of the spouse of the permit holder, devolve as prescribed in Rule 1 of the Third Schedule, which gives priority to the eldest son. If the 5th Respondent is the eldest son of Tikiri Appu, the 5th Respondent would be entitled to succeed under Section 72 of the Ordinance, provided all other conditions stipulated by law have been satisfied by the 5th Respondent.

The Petitioner who has developed the said land, is disputing the fact that the 5th Respondent is a legitimate son of Tikiri Appu. This Court cannot go into disputed questions of fact such as, whether the 5th Respondent is in fact a son of Tikiri Appu and whether Tikiri Appu was in fact married to Kalu Menika, who is the mother of the 5th Respondent.

The Petitioner cannot seek to benefit by an illegality. If the Respondents are of the view that there is prima facie evidence that the 5th Respondent is a son of Tikiri Appu and that the Petitioner has obtained a permit by suppressing and misrepresenting facts, the 1st Respondent shall be entitled to inquire into such

matter and arrive at a decision in terms of the law. This Court is of the view that if such an inquiry is held, both the Petitioner and the 5th Respondent should be afforded a hearing and the scope of the inquiry should be explained beforehand. Therefore, this Court does not see any legal basis to issue a Writ of Prohibition as prayed for.

The Petitioner has also sought a Writ of Mandamus to compel the Respondents to amend the extent of the land set out in the permit '**P9**' from 2R to 1A 6P. Neither the Petitioner nor the Respondents have submitted any documents to enable this Court to make a determination that the extent of the land given on a permit in 1940 to Tikiri Appu was in excess of 2R. The person entitled to succeed under Section 72 of the Ordinance cannot seek to get an extent of land more than what Tikiri Appu had been given by the State. It is a pre-condition that an applicant for a Writ of Mandamus must have a legal right before seeking to enforce that right by a Writ of Mandamus. The Petitioner has failed to satisfy this Court that the person entitled to succeed to the permit given to Tikiri Appu is entitled to an extent greater than 2R. Hence, this Court does not see any legal basis to issue a Writ of Mandamus.

Taking into consideration all the circumstances of this case, this Court makes no order with regard to costs.

Judge of the Court of Appeal