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

S.C. Appeal No. 90/2009
S.C. (Spl) L.A. Application No. 175/2008
C.A. (Writ) Application No.487/2000

In the matter of an application for Special Leave to Appeal from the Judgment of the Court of Appeal under and in terms of Article 128(2) of the Constitution.

1. Mary Leslin Mendis

2. T. Jayendra Mendis

Both of No. 193, Chilaw Road, Negombo.

PETITIONERS

Vs.

1. Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

2. A. L. M. Fernando
Chairman
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

3 Director, Land Ceiling,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

4 Minister of Agriculture and Lands
"Sampathpaya",
82, Rajamalwatta Road,
Battaramulla.

5. T. Nandana Mendis
68, Temple Road, Negombo.

6. T. Tosathirathna Mendis
68, Temple Road,
Negombo.

RESPONDENTS

AND NOW BETWEEN

1. Mary Leslin Mendis

2. T. Jayendra Mendis

Both of No. 193, Chilaw Road,
Negombo.

PETITIONERS-PETITIONERS

Vs.

1. Land Reform Commission,
C82, Gregory's Road,
Colombo 7.

2. A. L. M. Fernando
Chairman
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

3 Director, Land Ceiling,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

4 Minister of Agriculture and Lands
"Sampathpaya",
82, Rajamawatta Road,
Battaramulla.

5. T. Nandana Mendis
68, Temple Road,
Negombo.

6. T. Tosathirathna Mendis
68, Temple Road,
Negombo.

RESPONDENTS-RESPONDENTS

BEFORE: K. Sripavan C.J.,
Priyantha Jayawardena P.C., J
Anil Gooneratne J.

COUNSEL: Manohara de Silva P.C for the Petitioner-Appellant
instructed by Mr. K.V. Gunasekera Attorney at Law

Nihal Jayamanne P.C with Anandalal Nanayakkara for the
5th and 6th Respondent-Respondents.

Geeshan Rodrigo for the 1st to 3rd Respondent-Respondents

Rajitha Perera S.S.C. for the 4th Respondent-Respondent

ARGUED ON: 06.11.2015

DECIDED ON: 12.02.2016

GOONERATNE J.

This is an appeal from a judgment of the Court of Appeal dated 07.07.2008, dismissing an application for Writs of Certiorari and Mandamus, arising from certain decisions/and or orders of the Land Reform Commission

Law. A Writ of Certiorari was sought to quash that part of the order requiring approval of the Minister, in respect of a decision made by the 1st Respondent Commission under Section 14(1) of the said law. Mandamus was sought directing the 4th Respondent Minister, to grant the required approval for transfer of lands in dispute and to direct, the 1st Respondent Commission to transfer the land in favour of the Petitioners. However in the proceedings before the Court of Appeal learned President's Counsel for the Petitioner has indicated that his clients would not seek relief as per sub paragraph (b) of the prayer regarding a Writ of Mandamus and only the prayer pertaining to certiorari would be pursued.

On 21.07.2009, this court granted Special Leave to Appeal on the questions of law referred to in paragraphs 22(b), (c), (d) & (e) of the petition dated 12.08.2008.

It reads thus:

(b) Did the Court of Appeal err in holding that "the decision taken by the 1st Respondent to transfer the property that contained in letter dated 11.05.1999 (P3) is under section 22(1) (bb)" when P3 clearly states that it has been issued under Section 22(1) (a)?

(c) Did the Court of Appeal err in holding that the land in question is for a non-agricultural purpose when the same is admittedly an estate and no party has taken up the position that it is not an agricultural land?

(d) In any event, did the Court of Appeal fail to consider the definition of "agricultural land" given in Section 66 of the Land Reform Law which means not only land used as agricultural land, but also includes land capable of being used for agriculture. The lands described above are estates, and in the absence of any assertion that the estates were going to be converted to any other purpose the Court of Appeal erred in holding that the lands are for a non-agricultural purpose?

(e) Did the Court of Appeal err in not granting the reliefs prayed for in paragraph (a) and (c) of the prayer to the petition when the failure to effect the transfer under Section 14(1) was due to the fault of the 1st Respondent Commission and not of the Petitioner?

Learned counsel for 5th & 6th Respondents raised the following question of Law and accepted by court.

Whether the documents which has been produced before the Court of Appeal marked X1 – X12 precluded any relief being granted to the petitioner (Documents 'X1' – 'X12' are annexed to the petition dated 21.07.2010 of the 5th & 6th Respondents, filed in the Court of Appeal)

The following facts are admitted by all parties to this appeal.

(1) Statutory declaration as required by Section 18 of the Land Reform Law was made by Mudaliyar T. David Mendis on or about 15.11.1972, wherein it had been disclosed that in the said declaration names of 15 children as particulars of the family. (Folios 42 – 38 of LRC file)

(2) The said Mudaliyar Mendis was the statutory lessee.

(3) An application made in terms of Section 14(1) of the said law dated 25.11.1972 for an inter family transfer of certain lands in favour of one of the sons T. Jayaratne Mendis.

(4) On receipt of the declaration the Land Reform Commission processed the applications and allotted the lands (as described in paragraph 4 of the petition filed in the Court of Appeal and paragraph 5 of the petition filed in this court).

(5) The Commission failed to effect a transfer in favour of T. Jayaratne Mendis within one year of the above application, as per Section 14(2) of the Land Reform Law.

(6) On 01.11.1975 T. Jayaratne Mendis died.

(7) On or about 13.06.1977 Mudaliyar Mendis requested the Ministry of Agriculture and Lands, to transfer the lands allocated to late T. Jayaratne Mendis in favour of certain other members of the family (P1 annexed to petition 'A')

(8) Hon Attorney General's advice sought by the 1st Respondent Commission (X1) and advice received in this regard (P2).

(9) Two members of the family of Mudalioyar Mendis filed an application for intervention in the Court of Appeal Writ Application.

(10)Intervention was allowed by the Court of Appeal and parties added as 5th and 6th Respondents.

In this appeal, when one has to consider the totality of material placed before court there is no doubt that the 1st Respondent Commission has failed to take the required steps as per the Land Reform Law. At a very early stage the Commission failed to comply with the provisions contained in Section 14(2) of the Land Reform Law. As such the situation gradually became more complex, even to resolve the matter according to the available provisions of the Land Reform Law. Notwithstanding the advice of the Hon. Attorney General, the 5th and 6th Respondents to this appeal too have placed material to support their case, with certain orders made by the Land Reform Commission in favour of the 5th and 6th Respondents.

Petitioners seek to set aside the judgment of the Court of Appeal marked and produced as 'G'. In this connection the question of law at paragraphs 22(b) and (c) of the petition where Special Leave to Appeal was granted arising from order P3, need to be examined. What is objectionable to the petitioners is the last paragraph (3) of P3 wherein the Minister's approval had been sought. However order P3 would have been in favour of the Petitioners, if the Minister <u>in fact approved</u> the order P3.

In this regard Section 22(1) of the said law has to be considered. The said section as amended by Act No. 39 of 1981 and Act No. 14 of 1986 reads thus:

22 (1) Any agricultural land vested in the Commission under this Law may be used for any of the following purposes:

(a) alienation for agricultural development or animal husbandry by way of sale, exchange, rent purchase or lease to persons who do not own agricultural land or who own agricultural land below the ceiling;

(b) alienation by way of sale, exchange, rent purchase or lease to a person for agricultural development or animal husbandry, or for a cooperative or collective farm;

(bb) alienation, by way of sale or lease with the approval of the Minister, for non-agricultural purposes; and

(c) …….

I would refer to the following extract of the Judgment of the Court of Appeal which seems to be objectionable, to the Petitioners.

In the instant case the Petitioners have not made an application to the 1st Respondent for alienation of agricultural land for agricultural development or animal husbandry….

Even though the said decision to alienate the said agricultural land to the 1st Petitioner is stated in the letter dated 11.05.1999 (P3) is under Section 22(1) (a) of the said Law, the sale should have been under Section 22(1) (bb) of the said Law as the sale is for non-agricultural purposes. In view of Section 22(1)

(bb) alienation, by way of sale could be made by the 1st Respondent with the approval of the Minister. Therefore the Commission has sought the approval of the Minster.

It is evident that the above section 22(1) of the Land Reform Law contemplates of two positions, relevant to the case in hand.

(a) alienation for agricultural purposes as per Section 22(1) (a) of the said law.

It is the purpose for which agricultural land vested in the commission may be used. The above section (22(1) (a)) does not contemplate any kind of ministerial authority.

(b) alienation for non-agricultural purposes was introduced by the Amendment Act No. 39 of 1981 and Act No. 14 of 1986. If the alienation was for non-agricultural purposes ministerial approval would be necessary.

If the commission decides to act under Section 22(1) (a) the commission cannot abdicate their powers to the Minister. Nor can the Minister demand that his authority should prevail, as regards use of land for agricultural purposes. But if the lands in dispute are to be used for non-agricultural purposes ministerial authority would be necessary.

Letter P3 indicates that the commission for whatever reason decided to effect a transfer under Section 22(1) (a) as it was satisfied it was to

be alienated for agricultural purposes. There is no provision in law for the commission as contained in Section 22(1) (a) to obtain the approval of the minister to alienate land under the said section.

I regret to observe that the learned Judge of the Court of Appeal erred to the extent of stating in his Judgment by referring to letter P3 that "even though the said decision to alienate the said agricultural land to the 1st Petitioner is stated in the letter dated 11.05.1999 (P3) is under Section 22(1) (a) of the said law, the sale should have been under Section 22(1) (bb) of the said law, as the sale is for non-agricultural purposes. Either party to this appeal was not in a position to provide material that the purported alienation was for non-agricultural purposes. Court of Appeal has misdirected, in the application of law and fact in the instant case on this point. Judges cannot assume and rely on a state of facts which cannot be established and obtained from the record, especially when parties to the suit have not invited court to do so, or failed to provide such material. Nor can a Judge change the law based on assumptions. Law need to be interpreted in keeping in mind the intention of the legislature.

I am reminded of the following rule of interpretation. General Principles of Interpretation – Maxwell 12th Ed.

Pgs. 28 & 29

> If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.

> "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases. .....
>
> Where the language is plain and admits of but the meaning, the task of interpretation can hardly be said to arise. .....
>
> The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others."

The Land Reform Commission has acted ultra vires the Land Reform Law by inserting in P3 a (last sentence) request to get the approval of Minister. Court of Appeal erred by assuming and taking the view that land in dispute was for a non-agricultural purpose.

Section 22(1) of the said law does not pose any difficulty in its interpretation. It is just plain and simple. Judge should not add or modify its language but to give effect to its ordinary and natural meaning. This could be best understood as observed by Wadugodapitiya J. in Victor Ivan and Others Vs. Hon. Sarath N. Silva & Others 2001(1) SLR at pg. 327

> In the guise of judicial decisions and rulings, Judges cannot and will not seek to usurp the functions of the Legislature, especially where the Constitution itself is concerned.

What has been sought from the Court of Appeal is a Writ of Certiorari/Mandamus. These are discretionary remedies of court. Even if this court as observed above answers the question of law at paragraphs 22 (b), (c) and (d) in the affirmative in favour of the Petitioner, yet the relief sought are discretionary remedies, court is bound to consider whether the Petitioner has satisfied court, as regards the grounds on which a Writ of Certiorari and Mandamus were sought. Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, court has also to consider whether the Petitioners-Petitioners are disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioners are guilty of/and or disentitled to the remedy , based on

(a) Laches/undue delay
(b) Wilful suppression/misrepresentation of material facts
(c) Acquiescence
(d) Grave public/administrative inconvenience
(e) Futility
(f) Availability of alternative remedy
(g) Locus standi

Prerogative writs cannot be issued as of right or as a matter of course, due to its discretionary nature. A court has to examine any writ application, having considered the merits of the case and the question of an issuance of a writ.

Court of Appeal Judgment in its entirety makes no mention to the position of the 5th & 6th added Respondents, although intervention was permitted. Nor is there any reference to the objections filed on behalf of the 1st & 3rd Respondents. As such there is no clue in the Judgment as to the several steps taken by the Land Reform Commission in matters concerning the other members of Mudaliyar. Mendis' family consisting of 15 children. As stated above on a perusal of all the material placed before this court inclusive of the LRC, Departmental file made available to this court, notwithstanding the steps taken and dealings had by the Land Reform Commission on behalf of Petitioners, it is apparent that the Commission had made certain orders in favour of the 5th & 6th Respondents either simultaneously or during the relevant period or within a reasonable time after issuance of letter P3. (Vide 'X2', 'X3', 'X3A' & 'X12' (annexed to the petition of 5th & 6th Respondents and folios 442, 441 & 440 of L.R.C file marked 'Y' and folio 444 marked 'Z' from L.R.C file.)

I have perused Documents 440 – 442 from the L.R.C file. Same indicates that the L.R.C had made order in favour of the 5th & 6th Respondents and two other family members of late Mudaliyar Mendis as per Section 14 of the Land Reform Law. (documents at folios 442, 441 & 440 referred to above are dated 23.02.2000). The said letter also indicates that the commission has revoked the order made in favour of the Petitioners as evinced in P3, and the Minister's directive in this regard had been accepted by the commission. Document at folio 444 (Board minutes) confirm the above decision.

Document 'X2' dated 17.06.1977 letter sent to Mudaliyar Mendis by the L.R.C referring to his letter (P1) approves the allocation of lands to 5th & 6th Respondents and two other family members. 'X3' letter dated 30.04.1985 call upon Mr. Mendis to submit a survey plan to effect the necessary allocation of lands to 5th & 6th Respondents and other two family members. By 'X12' dated 27.04.2000 L.R.C confirm order 'X2' and communication 'X3'.

This is the complex situation that had arisen for the parties concerned and for the Land Reform Commission itself. I have to comment that the matters disclosed to court by the added 5th & 6th Respondents, are steps taken/orders made by the Commission, are all matters

for the commission to take full responsibility. The situation no doubt had given rise to certain inconsistencies and disputed facts, which is not well suited to be dealt in review procedures before a court of law.

I note the following matters which had not been disclosed by the Petitioner-Appellants in their Writ Application sought from the Court of Appeal. Such facts on one hand amounts to wilful suppression of material facts and on the other hand gives rise to disputed facts.

(a) The inter family transfer sought by Mudaliyar Mendis and his wife by letter P1, had response by the Land Reform Commission as evinced by letter 'X2' dated 17.06.1977 authorising as land allotted to 5th & 6th Respondents and two other family members namely Palitharatne Mendis & Thosathiratne Mendis

(b) Decision of the commission produced as 'X2' above, confirmed by 'X12' in the year 2000 by the Land Reform Commission. 'X12' issued subsequent to issuance of P3 (partly relied upon by the Petitioner-Appellants).

(c) Decisions made by the commission to sell the same properties referred to in letter P3 are also included in 'X2'. (in favour of the added Respondents and two others)

(d) Decisions taken in P3 had been set aside by the Land Reform Commission by documents produced as 'Y' (folio 442 of LRC file) and '2' (folio 444 of LRC file).

(e) Petitioner-Appellants could not have been unaware of above decisions in favour of 5th & 6th added Respondents, as the Writ Application was filed soon after 'X2' was issued in favour of the above added Respondents. Further letters P4, P5 & P6 sent by the two Petitioner-Appellants indicates the enthusiasm on the part of the said Appellants to get the commission activated on letter P3. In paragraph 11 of the petition filed in the Court of Appeal, it is pleaded that the 2nd Petitioner-Appellant visited the office of the Land Reform Commission on several occasions to obtain relief and sent letter P6 without success.

It is unimaginable that the Petitioner-Appellants were unaware of the matters referred to in (a) to (d) above.

(f) If P1 had been disclosed by the Petitioner-Appellants, there is no reason to <u>have not disclosed</u> the material in (a) to (e) above. Further an attempt could have been made to challenge the orders/decisions made in favour of the 5th & 6th Respondents, and as such those decisions confirm the position of the said Respondents.

(g) Decision P3 and 'X2', 'X3' are decisions/orders made by the Land Reform Commission. These decisions give rise to an inconsistent and disputed positions, based on entirety of the facts presented to court, by the parties concerned.

In all the facts and circumstances of this appeal, I observe that in the area of public law an Administrative Body, Statutory Institutions or any Authority established to deal with the public, must exercise its powers fairly, reasonably, rationally for the proper purpose for which these bodies and Institutions are established. In doing so, every attempt must be made to avoid contrary positions which gives rise to disputed facts. If the exercise of powers are challenged by a party it is incumbent upon the party concerned to disclose to court all material and relevant facts. The state and its Institutions also must rigorously observe its own internal standards and guide lines.

In this case court no doubt had to consider the vires of the decisions conveyed to the Petitioner by P3. As such the first three questions of law raised by the Appellants have to be answered in their favour in the affirmative. Court of Appeal erred to that extent. However the Petitioner-Appellants have sought prerogative writs to obtain relief. It is on that footing that the application filed in the Court of Appeal, ultimately ended in the Supreme Court by way of an

appeal. The path to obtain relief was by way of a Writ Application. This Court observes that the several points referred to in (a) to (f) above cannot favour the Appellants to obtain relief by way of a Writ Application. The final outcome of the Writ Application in the Court of Appeal was a dismissal of the Writ Application, but for the reasons stated therein in the judgment marked and produced as 'G'. Even if the Court of Appeal erred to the extent as stated above, this court observes that the final decision of dismissal should stand and we should not interfere with the said judgment dismissing the application. In arriving at this decision I have considered the decided cases on the point of non-disclosure of material facts. i.e *Pathirana J. Alphonso Appuhamy Vs. Hettiarachchci (1973) 77 NLR 131, 136; Dahanayake Vs. Sri Lanka. Insurance Corporation Ltd. (2005) 1 SLR 67, 78-9. Walker Son & Co. Ltd. Vs. Wijayasena 1997 (1) SLR 293, 301-2 per Ismail J.* "to make the fullest possible disclosure of all material facts". A Court of Appeal Judgment *per Jayasooriya J. Blanca Diamonds (Pvt) Ltd. Vs. Wilfred Van Els (1997) 1 SLR 360, 362-3*

Other aspect that would disentitle the Appellants to a remedy by way of a writ are the disputed facts. The issuance of letter P1 had been disputed by the Appellants. The several acts and steps taken by the commission are inconsistent and amount to disputed facts. It requires that major facts are not

in dispute and the legal result of the facts are not subject to controversy vide Thajudeen Vs. Sri Lanka Tea Board & Another 1981 (2) SLR 471. This Judgment considered and applied in a recent case S.C 59/2008 decided on 16.02.2009 Judgment of Thilakawardene J.

I answer the questions of law posed in this appeal as follows in paragraph 22 of the petition.

22 (b) Yes

22(c) Yes

22 (d) Yes

22 (e) No. Court of Appeal could not have granted the writs sought due to the reasons stated in this judgment and having considered the discretionary nature of such writs. However there was no valid order made by the commission as per Section 14(2) of the Land Reform law.

On the question of law raised by learned counsel for the 5th & 6th Respondents, I answer, the said question as follows.

In view of documents marked 'X1', 'X2', 'X3' & 'X 12', relief sought by way of certiorari/ mandamus cannot be granted.

In this regard the decisions referred to at folios 440 – 442 and 444 of the L.R.C file have also been considered by court. In all the facts and circumstances of this case the appeal to this court is dismissed without costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

K. Sripavan C.J

I agree

CHIEF JUSTICE

Priyantha Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT