

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

*In the matter of an appeal under Article 128 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC Appeal 169/2014

SC/SPL/LA/194/2013

CA (Writ) 761/2009

Kapukotuwa Mudiyanseelage Jayatissa,
No. 09/01,
Neelapola,
Seruwila.

PETITIONER

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Serunuwara.
2. District Secretary,
District Secretariat, (Kachcheri)
Trincomalee.
3. Deputy Commissioner of Lands,
Office of the Additional Commissioner of Lands,
Trincomalee.

4. Commissioner General of Lands,
No. 07,
Gregory's Avenue,
Land Commissioner General's Department,
Colombo 07.

5. Additional Commissioner of Land Development,
No. 07,
Gregory's Avenue,
Land Commissioner General's Department,
Colombo 07.

6. K. H. Sandya Kumari,
No. 10,
Neelapola,
Neelagala. (via Kantale)

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

RESPONDENTS

AND NOW BETWEEN

Kapukotuwa Mudiyanseelage Jayatissa,
No. 09/01,
Neelapola,
Seruwila.

PETITIONER - APPELLANT

Vs

1. Divisional Secretary,
Divisional Secretariat,
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2. District Secretary,
District Secretariat, (Kachcheri)
Trincomalee.

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

RESPONDENT - RESPONDENTS

Before: P. PADMAN SURASENA J

ACHALA WENGAPPULI J

MAHINDA SAMAYAWARDHENA J

Counsel: Ranjan Suwandarathne PC with Anil Rajakaruna for the Petitioner-Appellant.

Vikum de Abrew PC, ASG for the 1st to 5th and 7th Respondent-Respondents.

Jagath Nanayakkara for the 6th Respondent-Respondent.

Argued on: 26-11-2021

Decided on: 10-11-2022

P Padman Surasena J

The Petitioner-Appellant claims that he is the occupant of the state land in extent of 02 Acres and 2 Roods, bearing No. in 217B, situated in Neelapola Grama Niladari Division of Serunuwara Divisional Secretariat Division in Trincomalee District. Admittedly, he is an unauthorized occupant of the aforementioned state land. According to him, upon applications made by such unauthorized occupants, it is customary for the state authorities in Serunuwara area to regularize such unauthorized occupations by granting permits to such unauthorized occupants under the Land Development Ordinance. He

states that this is to enable such unauthorized occupants to continue occupation of such state lands.

According to the Petitioner-Appellant, he had come into the occupation of the said state land in 1995/1996 and has started cultivating in the same. It was the position of the Petitioner-Appellant that the 6th Respondent-Respondent (Hereinafter referred to as the 6th Respondent) had attempted to disturb his possession of this land in the year 2003 on the basis that her father (the 6th Respondent's father) was the original permit holder of the land. The Petitioner-Appellant states that he had thereafter written the letter dated 21st May 2003 produced marked **P 1** to the District Secretary (the 2nd Respondent-Respondent), requesting him to resolve the dispute.

The Petitioner-Appellant had also lodged the complaint dated 03rd June 2003 in Serunuwara police relating to the aforementioned dispute. He has produced a copy of the said complaint to Police, marked **P 2**.

Subsequently, on 09th June 2003 the Petitioner-Appellant had met the Commissioner General of Lands (the 4th Respondent-Respondent), seeking to resolve the dispute. In this regard, the Commissioner General of Lands, by letter dated 09th June 2003 produced marked **P 3**, had called from the Assistant Commissioner of Lands (Trincomalee) (the 3rd Respondent-Respondent), the report of the inquiry held by him in relation to this dispute. The contents of this letter shows that it had pre-supposed that an inquiry had already been held by the Assistant Commissioner of Lands (Trincomalee) by this time.

The Petitioner-Appellant had further stated that he was compelled to make further representation to the Divisional Secretary Serunuwara (the 1st Respondent-Respondent), as the Assistant Commissioner of Lands (Trincomalee), had failed to hold an inquiry according to the provisions of the Land Development Ordinance; i.e., the failure of the Assistant Commissioner of Lands (Trincomalee) to prepare and submit a report in relation to the above dispute to the Commissioner of Lands, as per the instructions in the letter dated 9th June 2003 (**P 3**).

Following the representation made by the Petitioner-Appellant, the Divisional Secretary Serunuwara by letter dated 06th August 2003 produced marked **P 4**, had brought to the notice of the District Secretary of Trincomalee, the complaint made by the Petitioner-Appellant who had alleged that the Assistant Commissioner of Lands (Trincomalee) had caused him an injustice in the inquiries conducted up to that time.

In the meantime, Serunuwara Police acting on the complaint dated 10th June 2003 made by the Petitioner-Appellant, had filed the report dated 20th June 2003 (produced marked **P 6**) in Muthur Magistrate's Court under section 66(1) of the Primary Court Procedure Act No. 44 of 1979. The Petitioner-Appellant states¹ that the Primary court had upheld the fact that he is in possession of that land, in that proceedings. He had produced the relevant Primary Court order dated 11th September 2003 [**P 6(a)**] which is in Tamil language.²

Thereafter, the Commissioner General of Lands, by the letter dated 2nd October 2003³ produced marked **P-5**, had reminded and again requested the Assistant Commissioner of Lands (Trincomalee) to submit a report setting out answers to the two queries made in the said letter. The said queries were whether a permit has been issued to the 6th Respondent and whether the Petitioner-Appellant was in possession of the disputed land. The letter **P 5** is a reminder to the letter **P 3**.

The Petitioner-Appellant states that he thereafter (after the Magistrate's court upheld his possession), requested the Divisional Secretary by the letter dated 11th February 2004 (produced marked **P 7**), to issue him a permit for the disputed land. The Divisional Secretary thereafter by letter dated 13th February 2004 (produced marked **P 8**), had forwarded the said request to the Assistant Commissioner of Lands (Trincomalee).

The Petitioner-Appellant further states that although an inquiry was thereafter conducted by two officers as advised by the Assistant Commissioner of Lands (Trincomalee), the

¹ Petition dated 6th November 2009 filed in the Court of Appeal in paragraph 17 & 18.

² No translation has been provided.

³ The date of the said letter is as per the Petition dated 6th November 2009 filed in the Court of Appeal. The letter marked P 5 only indicates that the same was issued in October 2003.

said inquiry was not conducted impartially. Accordingly, the Petitioner-Appellant by letters dated 21st July 2004 and 28th July 2004 marked **P 9** and **P 10** respectively informed the District Secretary of Trincomalee, about the conduct of the said officers and requested him to take necessary action in that regard. In addition to the aforementioned letters, the Petitioner-Appellant had also filed a complaint dated 15th July 2004 in the Serunuwara police station regarding the same. This has been produced marked **P 11**.

Thereafter, upon a request made by the Petitioner-Appellant, the District Secretary of Trincomalee, by letter dated 02nd August 2004 produced marked **P 12**, had advised the Commissioner of Lands to hold a fresh inquiry with different officials. The inquiry report dated 23rd July 2004 is the report pertaining to the alleged partial inquiry referred to in the letter **P 12**.

The 3rd Respondent-Respondent, the Assistant Commissioner of Lands (Trincomalee) (Hereinafter sometimes referred to as the 3rd Respondent) has admitted the letter **P 12**.⁴ The 3rd Respondent has produced that report (dated 23rd July 2004) marked **3R 2**. This shows that the District Secretary of Trincomalee (2nd Respondent-Respondent), had not accepted the inquiry report dated 23rd July 2004 which had recommended granting of the permit relating to the disputed land to the 6th Respondent.

The Petitioner-Appellant states that he had also made a formal application to issue the permit under his name by relying on the Magistrate's Court order. The Petitioner-Appellant has produced the said formal application, marked **P 13**. In the meantime, the Petitioner has also made several requests to the Respondents requesting for the permit to be issued to him. The said request letters have been produced marked **P14, P15, P16, P17, P18**.

On or about 6th March 2009, the Petitioner-Appellant had received summons (**P 19**) as the 6th Respondent had instituted the action bearing No. 2373/2009 in the District Court of Trincomalee. The 6th Respondent had instituted the said action relying on a permit

⁴The affidavit dated 11th November 2019 filed by the 3rd Respondent in the Court of Appeal in paragraph 16.

issued in her name for the same land under the Land Development Ordinance. The said permit has been produced marked **P 21**.

It is the position of the Petitioner-Appellant that he was neither informed nor aware of holding of any inquiry before the Assistant Commissioner of Lands (Trincomalee) had prepared the inquiry report dated 23rd July 2004 (**3R 2**).⁵

It was in the above circumstances that the Petitioner-Appellant had filed the instant writ application in the Court of Appeal against the Respondent- Respondents praying *inter alia* for:

- i. a writ of *certiorari* to quash the permit issued to the 6th Respondent,
- ii. a writ of *mandamus* against the 1st to 5th Respondent-Respondents to compel them to take steps to rectify the erroneously issued permit and to restore his rights and privileges.

The grounds upon which the Petitioner-Appellant had filed the instant writ application in the Court of Appeal can be gathered by paragraph 37 of the petition dated 06th November 2009 filed in the Court of Appeal. According to the said paragraph 37 of the petition dated 06th November 2009, the Petitioner-Appellant had complained to the Court of Appeal that the permit of the 6th Respondent has been issued contrary to law, is *ultra vires*, and is voidable. The followings can be taken as the summary of the complaint to the Court of Appeal.

- i. The said permit has been issued violating the principles of natural justice and in violation of the principle of Audi Alteram Partem
- ii. The Respondents have no legal basis to arrive at such a recommendation to grant a permit to the 6th Respondent in view of the long term possession by the Petitioner of the said land.

⁵ The affidavit dated 06th November 2008 filed by the Petitioner-Appellant in the Court of Appeal in paragraph 25.

- iii. The Petitioner who made numerous requests to obtain a permit, had not been given any notice of any inquiry prior to the recommendation on 30th October 2006 and in any event prior to the permit was issued.
- iv. The Respondents have abused the powers vested in them and come to conclusions acting with bias and ulterior motives.
- v. In any event the Respondents have not considered that the 6th Respondent cannot rely on the succession of a permit which has been issued to any other person not being in possession for over 13 years.
- vi. The said permit as well as the recommendation clearly violate the legitimate expectation of the Petitioner to obtain a permit of the land of which he had been in possession for over 13 years.
- vii. The said decisions clearly violate the legal rights and legitimate expectations, benefits and rights of the Petitioner under the Land Development Ordinance to enjoy the continuous occupation and cultivation of the land under a permit that should be issued to him.
- viii. The said permit was issued to the 6th Respondent by error and on the false representations of the 6th Respondent.

After concluding the argument of the case, the learned Judges of the Court of Appeal had pronounced the judgment dated 05th July 2013 holding *inter alia* that the Petitioner-Appellant did not have a valid permit; the Petitioner-Appellant's long term unauthorized possession does not entitle him a permit in his name; the Petitioner-Appellant had deliberately refused to participate in the inquiry stating his reasons to the Assistant Commissioner of Lands (Trincomalee) on 23rd February 2003 which he had recorded in the document he had produced marked **3 R1** in the Court of Appeal. It was due to the above reasons that the Court of Appeal had dismissed the application of the Petitioner-Appellant.

Being aggrieved by the judgment of the Court of Appeal, the Petitioner-Appellant had sought Special Leave to Appeal against the judgment. The Supreme Court, upon hearing the learned counsel for the Petitioner-Appellant and the learned Deputy Solicitor General, by its order dated 22nd September 2014, had granted Special Leave to Appeal on the following two questions of law (verbatim):

- a. Have Their Lordships of the Court of Appeal totally failed to consider the fact that the Respondents have failed to hold a proper and due inquiry in relation to the application made by the Petitioner to obtain a permit in order to regularize his possession of the property which he was cultivating for an extremely long period of time.*
- b. Have their Lordships of the Court of Appeal failed to consider the fact that the final inquiry dated 23rd July, 2004 has not been informed to the Petitioner nor he was provided an opportunity to place his facts at the inquiry in arriving at their final conclusion?*

A closer look at the above questions of law shows that they would finally rest on the question whether the Petitioner was provided an opportunity to participate in the inquiry before arriving at the final conclusion. Thus, I would first focus on the above question and it would be convenient to focus more on the question of law set out in (b) above for that purpose.

Let me commence with the position of the Petitioner-Appellant with regard to the question of law set out in (b) above. It is the position of the Petitioner-Appellant that he was unaware of the date fixed for the inquiry which had taken place on 23rd July 2004. Moreover, it is his position that he was not provided with an opportunity to be heard since the Respondent had not informed him the date fixed for the inquiry. According to the Petitioner-Appellant he had neither received any notice nor received any reports or decisions concluded during the said inquiry. The Petitioner-Appellant further claims that it was the influence of the 6th Respondent which led the Respondents not to provide him an opportunity to present his case and that influence resulted in the relevant permit

being issued to the 6th Respondent despite the continuous occupation of the land by him for a long time.

Let me at this stage turn to the position taken up by the 3rd Respondent in relation to the Petitioner-Appellant's complaint. Nowhere in his affidavit, the 3rd Respondent has asserted that he had taken any step to notify the Petitioner-Appellant about the holding of an inquiry. Leaving alone informing the Petitioner-Appellant about the date fixed for the inquiry, the 3rd Respondent in his affidavit has not even mentioned as to when this purported inquiry was conducted. Moreover, the 3rd Respondent has neither produced nor relied on any document/material to convince Court that he had taken any step to notify the Petitioner-Appellant about the holding of an inquiry before the inquiring officer prepared his report dated 23rd July 2004.

In the above circumstances, it is not difficult for me to conclude that no state authority has either taken any step to inform the Petitioner-Appellant, the date fixed for the inquiry or to provide him an opportunity to present his case before deciding to grant the relevant permit to the 6th Respondent despite the Petitioner-Appellant's complaint that he has been in long term possession of the land.

By the letter dated 06th August 2004 marked **3 R3**, it is clear that the Commissioner of Lands had directed the Assistant Commissioner of Lands (Trincomalee) to take steps to issue a permit to the 6th Respondent acting on the inquiry report dated 23rd July 2004 (**3 R2**). Although the 3rd Respondent-Respondent has admitted the letter **P 12** (the letter by the District Secretary advising the Commissioner of Lands to hold a fresh inquiry with different officials), he has not even attempted to explain whether any action was taken in that regard. It is relevant to note that the letter dated 06th August 2004 marked **3 R3**, deciding to issue a permit to the 6th Respondent had been issued just 03 days after the letter **P 12**. Thus, it is clear that the request to conduct an inquiry through an independent official could not have been done before deciding to issue the impugned permit to the 6th Respondent by the letter dated 06th August 2004 marked **3 R3**.

The document marked **3 R2**, the inquiry report dated 23rd July 2004 submitted by Mr. D. M. N. Dissanayake, Assistant Commissioner of Lands (Trincomalee), seeks to assert that the Petitioner-Appellant had deliberately defaulted appearing in the inquiry and that led to the issuance of the permit to the 6th Respondent. The Assistant Commissioner Lands-Trincomalee in the same report has also adverted to the fact that the Petitioner-Appellant, even previously had behaved in a similar manner.⁶

If that was the case, the question arises as to why the Assistant Commissioner Lands-Trincomalee did not think it was prudent to send a written notice to inform the Petitioner-Appellant, the date fixed for the inquiry or to provide him an opportunity to present his case before deciding to grant the relevant permit to the 6th Respondent. The Assistant Commissioner Lands-Trincomalee had not done so.

Moreover, the 3rd Respondent seems to have relied only upon the document marked **3R 2**, which is the very document challenged by the Petitioner-Appellant. The 3rd Respondent has not been able to produce any other independent document to convince Court that he had taken all possible steps to comply with the Rules of Natural Justice.

It must to be noted that the Land Development Ordinance has set out the procedure to be followed when granting permits to the State Lands. Similarly, the said Ordinance has set out detailed procedure as to how a person could succeed to a land in respect of which a previous permit has already been granted to another. Moreover, the said Ordinance has also set out the procedure to be followed when the State wants to cancel such permits. For instance, section 106 of the ordinance requires the Government authority to issue a notice in the prescribed form asking the permit holder to show cause why his permit should not be cancelled. Section 107 of the Ordinance states that the date specified in such notice shall not be less than 30 days from the date of the issue of such notice. Additionally, section 108 of the Ordinance requires that a copy of such notice to be affixed in a conspicuous position on the relevant land. Such are the statutory requirements set out in the Ordinance designed as safeguards to uphold the principals of

⁶ Report dated 23rd July 2004 marked 3 R2 in paragraph 4.

Natural Justice in those circumstances. Thus, the State officials, although the instant situation is different from those described above, cannot and should not deviate from giving sufficient notice at least to the rival party who will be directly affected by the decision to be taken. This is nothing but compliance of rules of Natural Justice in its simplest form.

The inquiry report dated 23rd July 2004 (**3R 2**) does not set out a specific legal provision under which the inquiring officer and the other state officers had acted when they had decided to grant the permit to the 6th Respondent. While the 3rd Respondent does not take up the position that the permit to the 6th Respondent was issued subsequent to a holding of a land kachcheri in terms of chapter III of the Ordinance, he also does not say that the 6th Respondent has succeeded to the land in terms of chapter VII of the Ordinance.

The Respondents have denied that they are aware of any customary practice in Serunuwara area to grant permits under the Land Development Ordinance to unauthorized occupants, upon applications made by them to regularize their illegal occupation of state lands.⁷ If that is the stated position of the Respondents, then they are obliged to satisfy Court how and under what provision of law they have taken steps to issue a permit to the 6th Respondent. The Respondents maintain silence on this issue.

Despite the above denial by the Respondents, it is an admitted fact by the Respondent that an inquiry was held. Although the Respondents have stated in their objections that they are bound by the provisions of the Land Development Ordinance, the provision under which they held this inquiry is only known to them. Be that as it may, whatever the nature of the inquiry the Respondents had conducted, that inquiry had decided that the Petitioner-Appellant is not entitled to a permit under the Land Development Ordinance.

Thus, it can reasonably be inferred that the 3rd Respondent has held this inquiry as per the said practice adverted to above, by the Petitioner-Appellant. In such an event, I am

⁷ The affidavit dated 11th February 2011 filed by the 3rd Respondent in the Court of Appeal in paragraph 8; The statement of objections dated 11th February 2011 filed by the 1st -5th Respondents in the Court of Appeal in paragraph 6.

unable to accept that there is no obligation on the part of the Government officers dealing with the property rights of the citizens to give due notice of such inquiries to all the parties concerned. This is more so because upholding the rule *Audi Alteram Partem* is seen permeating throughout the Land Development Ordinance from its inception.

Let me now turn to the Judgment of the Court of Appeal.

The Court of Appeal had gone on the basis that the Petitioner had refused to participate at the inquiry and conducted himself in an unacceptable manner. Thus, the Court of Appeal appears to have placed the full reliance on the inquiry report dated 23rd July 2004 (**3 R2**). As that is the document the Petitioner-Appellant had sought to impugn in this very application, I am of the view that it is not correct for the Court of Appeal to have relied upon the very impugned document to conclude that the Petitioner-Appellant had refused to participate at the inquiry. Moreover, the Court of Appeal has only focused in its judgment, the argument that the Petitioner-Appellant is not entitled to a permit on his claim of long-term possession. This is besides the Petitioner- Appellant urging the breach of the rule *Audi Alteram Partem*, as his first ground for the issuance of a writ of *certiorari*.⁸

The Court of Appeal in its judgement has not considered at all, the question whether the Petitioner-Appellant was given notice of the inquiry held on 23rd July 2004 to enable him to place his facts before the inquiring officer. Thus, I have to answer the question of law set out in (b) above in the affirmative and in favour of the Petitioner-Appellant. As mentioned above, considering the fact that the case of the Petitioner- Appellant finally would finally rest on the question whether the Petitioner was provided an opportunity to participate in the inquiry before arriving at the final conclusion, I find that answering the same is sufficient to dispose the instant application. Thus, I would not endeavor to consider the question of law (a).

For the foregoing reasons, I set aside the judgment dated 05th July 2013 of the Court of Appeal. I hold that the Respondents have breached the rules of Natural Justice namely the rule *Audi Alteram Partem* when deciding to grant the permit to the 6th Respondent.

⁸ Petition dated 6th November 2009 filed in the Court of Appeal in paragraph 37.

This has rendered the said decision and all subsequent actions relying on that decision null and void. In those circumstances, I proceed to issue a writ of *certiorari* quashing the permit issued to the 6th Respondent produced marked **P 21**. I direct the 1st-5th Respondent-Respondents to hold a proper inquiry according to law, after giving due written notice to all the parties concerned and arrive at an appropriate conclusion with regard to the granting of the permit to the relevant land. The fresh inquiry must be conducted by an independent officer other than those involved at any step in the previous process. Appeal is allowed.

The Petitioner-Appellant is entitled to the costs of litigation in both Courts.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI J

I agree,

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA J

I agree,

JUDGE OF THE SUPREME COURT