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

Case No. S.C. (Writ) 01/2014

In the matter of an application for Orders in the nature of Writs of Certiorari and Prohibition under Article 140 of the Constitution read with Section 4(1) of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 and Article 118(g) of the Constitution.

Balangoda Plantations PLC
110, Norris Canal Road,
Colombo 10.

PETITIONER

Vs.

1. Janaka Bandara Tennakoon
   Minister of Lands and Land Development,
   80/5, "Govijana Mandiraya"
   Rajamalwatta Mawatha,
   Battaramulla.

2. C.M. Kottewatte
   Divisional Secretary Ratnapura
   Ratnapura Divisional Secretariat Office
   Ratnapura.

3. H.W. Gunadasa
   Former District Secretary Ratnapura,
   District Secretariat,
   Ratnaprua.

4. Hon. W.D.J. Seneviratne
Minister of Public Administration and
Home Affairs,
Independence Square,
Colombo 7

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5. Hon. Mahinda Samarasinghe
Minister of Plantation Industries
Ministry of Plantation Industries
55/75, Vauxhall Lane,
Colombo 2.

6. Secretary
Ministry of Plantation Industries
55/75, Vauxhall Lane,
Colombo 2.

7. Sri Lanka State Plantations
Corporation,
No. 11, Duke Street,
Colombo 1.

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

RESPONDENTS

BEFORE: S. E. Wanasundera P.C., J
Anil Gooneratne J. &
K. T. Chitrasiri J.

COUNSEL: Maithree Wickramasinghe P.C. with Rakitha Jayatunga
For Petitioner instructed by K. U. Gunasekara

Viraj Dayaratne D.S.G for Attorney General

ARGUED ON: 25.02.2016

DECIDED ON: 28.07.2016

GOONERATNE J.

This was an application for Writ of Certiorari and Prohibition filed in this court on 30th June 2014, by the Balangoda Plantations PLC against Eight Respondents. The main relief sought as per the prayer to the petition and referred to in paragraph (b) of the prayer to petition are for Writ of Certiorari to quash:

(i) An order made under Section 38 proviso (a) of the Land Acquisition Act marked X14 dated 07.05.2014.

(ii) An order made under Section 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980 marked X23 dated 22.01.2014.

It is also pleaded in paragraphs 14, 19 & 21 of the petition that the Petitioner also filed a writ application bearing No. 164/2014 in the Court of Appeal earlier to have the aforesaid order X14 quashed and when that application came up for hearing on 20.06.2014 in the Court of Appeal the learned State Counsel who appeared for the 5th Respondent in that case informed court that an order X 23 had been made by His Excellency the President under Section 2 of the Urban Development Project (Special Provisions) Act No. 2 of 1980. It was the position of the petitioner that the Petitioner

became aware of the said order X23 for the first time on 20th June 2014 as submitted by State Counsel, and a motion was filed on 25.06.2013 to withdraw the writ application filed in the Court of Appeal. Subsequently within about five days the present writ application was filed in the Supreme Court seeking inter alia the relief prayed for as above.

On the date of support (15th September 2014) before this court, three preliminary objections were raised by the learned Deputy Solicitor General as follows:

1. That the application filed in this Court is out of time in view of the provisions of Section 4(2) of the Urban Development Project (Special Provisions) Act No. 2 of 1980.
2. That necessary parties namely, Urban Development Authority and Secretary to the Ministry of Urban Development have not been cited as Respondents to the application;
3. The Petitioner does not have locus standi in view of the fact that he is only a lessee of land that is admittedly owned by the 7th Respondent.

I had the benefit of perusing the submissions of both parties to this Application. It would be convenient to all if these objections were considered in the order in which same was presented to this court.

(1) <u>Application filed in the Supreme Court is out of time</u>.

It is axiomatic that procedural safeguards which are so often imposed

for the benefit of persons affected by the exercise of administrative powers, are normally regarded as mandatory, so that it is fatal to disregard them. On the other hand no universal rule can be laid down for the construction of statutes, as to whether mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience – Liverpool Borough Bank Vs. Turner (1861) 2 De GF & J 1507 (Lord Campbell).

I will at this point, refer to Maxwell on Interpretation of Statutes – 12 Ed pg. 314/315.

> It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed" And Lord Penzance said: "I believe as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter, consider the importance of the provisions that has been disregarded, and the relation of that provisions to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or directory.

The statute in question the Urban Development Project (Special Provisions) Act No. 2 of 1980 in its title, in order to ascertain the general purpose of the statute states, an act to provide for the declaration of lands urgently required for the carrying out Urban Development Projects etc. The matters contained in the title of the Act are further amplified in Section 2 of the said Act which reads thus:

> Where the President, upon a recommendation made by the Minister in charge of the subject of urban development, is of opinion that any particular land is, or lands in any area are, urgently required for the purpose of carrying out an urban development project which would meet the just requirements of the general welfare of the People, the President may, by Order published in the *Gazette*, declare that such land is, or lands in such area as may be specified are, required for such purpose.

It is the Head of State the President of the country who form an opinion that lands are urgently required for an Urban Development Project to meet the just requirement of the general welfare of the people. Scope of the enactment indicates that it had been enacted for the benefit of the people or the public. The question of urgency is considered by the statute. The other important section is Section 3 which imposes certain restrictions on a litigant affected by a declaration made under the above Section 2 of the Act and limits his remedy for compensation and damages to be claimed in a Court of Law. It also curtail to an extent, jurisdiction of other courts other than the Supreme Court.

The Writ jurisdiction conferred in the Court of Appeal under Article 140 of the Constitution had been exclusively vested in the Apex Court, and the writ jurisdiction of the Court of Appeal had been ousted as referred to therein. (Section 4(1)) The urgency, the benefit to the public and its importance to the general purpose of the statute no doubt has been demonstrated in the above sections and the other provisions of the statute. In a gist the statute is enacted

for the welfare of the people which is considered as an urgent project, for which the President of the country forms an opinion.

Section 4 of the said Act reads thus:

> (1) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation to any particular land or any land in any area in respect of which an Order under or purporting to be under section 2 of this Act has been made, be exercised by the Supreme Court and not by the Court of Appeal.
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> (2) Every application invoking the jurisdiction referred to in subsection (1) shall be made within one month of the date of commission of the act in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.

The urgency that is contemplated by the statute and its importance to the general public and their welfare would be paramount to decide the question of mandatory or directory. One need to at this point also keep in mind that prerogative writs are not granted by courts as a matter of course. Inordinate delay in filing a writ application would disentitle a party for a remedy by way of Writ of Certiorari. Writs like other applications for review are discretionary remedies of court. Writs no doubt are issued as in article 140 of the Constitution subject to the Provisions of the Constitution. That does not mean that the discretionary nature of writs found on English Law could be ignored. I observe that basic principles that disentitle a party for a writ unless specifically dealt in the constitution cannot be said to offend the Constitution. In any event in the

context and circumstances of the case Petitioner has filed the application in the Supreme Court beyond the period permitted by Act No. 2 of 1980, and I hold that it is mandatory to comply with time limits specified by Act No. 2 of 1980, as regards filing a Writ Application in the Supreme Court.

I have considered all the reasons given by the Petitioner that the Petitioner was unaware of a publication of a Section 2 notice under Act No. 2 of 1980. The Section 2 notice was published in the Gazette on 22.01.2014. In Law Publication of a Gazette is no doubt notice to the public. As such it is unfortunate that explanation for delay in filing the application cannot be considered, as a strict interpretation need to be given having considered the importance of objects and functions of the Statute which is enacted for the welfare of the people. Nor could I see any impossibility of filing an application in the Supreme Court in the manner as urged by the Petitioner.

I agree that the observations by *M.D.H. Fernando J. in the case of K.T.D.S.N de Silva and others Vs. Salinda Dissanayake Minister of Land Development … (2003) 1 SLR 52* are very much helpful to consider the point of mandatory nature of time limits imposed by the statute to file a writ application in the Supreme Court. I note the following.

At pg. 59..

> The purpose of the UDP Act was to ensure that lands urgently required for urban development projects were obtained without the delays caused by (1) the

exercise of the writ jurisdiction, original and appellate, and (b) the exercise of the jurisdiction of the other courts. Accordingly, section 4 abolished the appellate jurisdiction, and transferred the original writ jurisdiction to the Supreme Court, with time limits, thereby considerably reducing delays attributable to the exercise of the writ jurisdiction; and section 3 prevented other courts granting injunctions and making orders which would stay, restrain or impede the acquisition of any land, the carrying out of work thereon, and the implementation of the project.

(2) Necessary Parties not before court

The Respondent urge that Section 2 notice issued under Act No. 2 of 1980 relate to an Urban Development Project and the involvement of the Ministry of Urban Development and the Urban Development Authority is apparent. As such Secretary to the Ministry of Urban Development and the Urban Development Authority are essential parties.

In this application I note that Gazette Notification under Section 2 of Act No. 2 of 1980 marked as X23 indicates that His Excellency the President was the Minister in charge of Urban Development. The Minister was the President and accordingly as per Article 35(3) of the Constitution Hon. Attorney General is a party and the 8th Respondent appears in a representative capacity for the President. Nor any allegations are made in the petition against any Ministry officials or the Urban Development Authority. Allegations are made in paragraph 23 of the petition against the 2nd, 3rd, & 4th Respondents to the effect that the President was misled by them, to make order X23.

It appears to this court that all necessary parties are before court. As such the objection raised by learned Deputy Solicitor General cannot be maintained. Accordingly the objection raised as regards necessary parties would be overruled.

(3) Locus Standi

The objection raised in this regard is based mainly on the position that 7th Respondent the State Plantation Corporation is the owner of the land in dispute and the Petitioner is only a lessee of the 7th Respondent. It is further stated that any action to be taken on behalf of the 7th Respondent should by under the name of the 7th Respondent. This is in a way an anomalous situation. The 7th Respondent being a State Corporation cannot agitate the matter against the President of the State as all Ministries are under the President and the Ministry of Plantation would have a role to play as regards the Petitioner notwithstanding the fact that the Petitioner is a separate legal entity.

The Petitioner Company by an indenture of lease marked X5 and X5A has been granted a lease for a period of 53 years. As such all attributes of ownership goes with it. In the body of the petition it is pleaded that the petitioner had developed the land in dispute by expending considerable amount of money. As such Petitioner no doubt would be a person affected by order X23. I also fortify my views that the Petitioner has locus standi by the dicta in

Bogawantalawa Plantations Ltd. Vs. Minister of Home affairs and Plantation Industries 2004 (2) SLR 329. This is no doubt a persuasive Judgment of Marsoof J. (delivered when he was the President of the Court of Appeal). It was held on locus standi as follows:

> In regard to the question of locus standi; learned Deputy Solicitor-General contends that the petitioner is not the legal owner of the lands in question and is therefore not a person interested in the said land. He relies for his submissions on the unreported judgment of this Court in Vayamba Plantation (Pvt) Ltd. v Hon. D.M. Jayaratne, Minister of Agriculture and Lands and four others. This Court finds that the petitioner, who is admittedly in possession of the lands in question and has expended enormous sums of money for the development of the estates, is a person affected by the Order P7, and is therefore entitled to seek redress from this Court by way of prerogative relief. The unreported decision cited by the learned Deputy Solicitor General has to be confined to the four corners of the Land Acquisition Act in the context of which it was made. The said decision relates to the definition of the phrase "person interested" in the Land Acquisition Act, and has no general application.

As such I hold that the Petitioner has sufficient locus standi to file this application. I overrule the objections raised on locus standi.

In all the above facts and circumstances I hold that it is <u>mandatory</u> as per Section 4 of Act No. 2 of 1980 to file a Writ Application in the Supreme Court <u>within one month</u> of the date of commission of the Act in respect of which or in relation to which an application is made to the Supreme Court. As such the Petitioner had filed this application outside the permitted time period contemplated by the relevant statute. Further I observe that Section 3 of Act No.

2 of 1980 does not affect the jurisdiction by Article 140 of the Constitution which in terms of Section 4(1) has been transferred to the Supreme Court. As such on the 1st preliminary objection raised by the State which I uphold, this application stands dismissed. However I am not inclined to hold in favour of the State on the other two preliminary objections regarding necessary parties and locus standi. In any event this application stands dismissed without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C., J

I agree.

JUDGE OF THE SUPREME COURT

K. T. Chitrasiri J.

I agree.

JUDGE OF THE SUPREME COURT