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

Wickramage Don Subadra,
No. 234/E,
Mulleriyawa North,
Angoda.
Petitioner

SC FR NO: SC/FR/247/2016

Vs.

1. Kotikawatte Mulleriyawa
   Pradeshiya Sabhawa,
   Head Office, Gothatuwa New Town.
2. Kumuduni Gunathilleka,
   Secretary,
   Kotikawatte Mulleriyawa
   Pradeshiya Sabhawa,
   Head Office, Gothatuwa New Town.

2A. Chandani Ekanayake,
   Secretary,
   Kotikawatte Mulleriyawa
   Pradeshiya Sabhawa,
   Head Office, Gothatuwa New Town.

3. Prasanna Solangarachchi,
   Solanga Drive,
   Himbutana, Angoda.
4. Polwattege Arosha Asantha Perera,

No. 228/A, Mulleriyawa North,
Angoda.

5. Sri Lanka Land Reclamation and
Development Corporation,
No. 3, Jayawardenapura Mawatha,
Sri Jayawardenapura Kotte.
6. Urban Development Authority,
7th Floor, Sethsiripaya,
Battaramulla.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Hon. Justice Vijith K. Malalgoda, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Shantha Jayawardena with Thilini Vidanagamage for the Petitioner.
Migara Kodithuwakku for the 1st and 2A Respondents.
Yuresha de Silva, D.S.G. for the 5th – 7th Respondents.

Written Submissions:

By the Petitioner on 03.02.2021 and 08.07.2024
By the 1st – 2nd Respondents on 29.07.2021 and 25.06.2024
By the 5th – 7th Respondents on 12.01.2021

Argued on: 12.06.2024

Decided on: 05.08.2024

Samayawardhena, J.

Introduction

The petitioner filed this application in this Court against (1) the Kotikawatte-Mulleriyawa Pradeshieya Sabhawa, (2) its Secretary, (3) its former Chairman, (4) a person by the name of P.A.A. Perera, (5) the Sri Lanka Land Reclamation and Development Corporation, (6) the Urban Development Authority and (7) the Attorney General, seeking a declaration that her fundamental rights guaranteed by Article 12(1) of the Constitution was infringed by the 1st, 2nd, 3rd, 5th and 6th respondents by the arbitrary demolition of the northern boundary wall of the petitioner's land, and compensation.

Although the Sri Lanka Land Reclamation and Development Corporation and the Urban Development Authority were made as parties, the petitioner primarily based her case on the claim that the Kotikawatte-Mulleriyawa Pradeshiya Sabha, utilizing its own bulldozer and operated by its employee, demolished her northern boundary wall on 02.07.2016.

Duty of *uberrima fides*, suppression and misrepresentation of material facts

In the petition and corresponding affidavit of the petitioner dated 26.07.2016, the petitioner's position was that the said boundary wall was constructed with the approval of the Pradeshiya Sabha. The petitioner gave prominence to this in her petition, the corresponding affidavit, and the written submissions filed prior to the argument. In paragraph 8 of her affidavit the petitioner stated that "*The said approval seal placed on the building plan [marked P4] gave approval for a mixed purpose building, security installations and* ***boundary walls***." (emphasis by the petitioner) In paragraph 9 she further stated that "*after completing the construction*

of my house, including the boundary walls, the then Chairman of the 1st respondent issued Certificate of Conformity" marked P5.

According to the side minute under the journal entry dated 04.08.2016, notices of this application had been issued on 05.08.2016. The application was supported and leave to proceed was granted on 10.08.2016 in the absence of the Pradeshiya Sabha.

The position of the Pradeshiya Sabha is that the said boundary wall was an unauthorized construction built without any approval from the Pradeshiya Sabha. I am inclined to accept this position. The petitioner relies solely on the seal placed on the building plan marked P4 by the Pradeshiya Sabha to present a distorted case that the boundary wall was constructed with the approval of the Pradeshiya Sabha, and that following its construction, the Pradeshiya Sabha issued the Certificate of Conformity. P4 contains only the building plan and nothing else. No proposed boundary wall is shown on P4 although the common seal placed on P4 contains the words "*Mixed-Residential/Commercial purposes/Buildings for Security/Boundary Walls/Survey Plan*". The Pradeshiya Sabha has not deleted the irrelevant words. The Chairman has placed his signature on the building plan under the said words.

This constitutes a misrepresentation or a distortion of material facts. If this was drawn to the attention of the Court when the application was supported for leave to proceed, the Court could have taken a different view, although the petitioner now states that, even if it is an unauthorized construction, the Pradeshiya Sabha could not demolish the wall without an order obtained from the Magistrate's Court under the relevant statutory provisions, i.e. in terms of section 28 of the Urban Development Authority Law, No. 41 of 1978, and other relevant laws.

It is settled law that lack of *uberrima fides*, suppression or misrepresentation of material facts, and the conduct of the petitioner are relevant factors that the Court can consider, particularly in writ applications, as writ is a discretionary remedy. This principle is frequently applied in injunctive reliefs as well. This judge-made rule now hardened into law has been extended to fundamental rights applications as well, since the Supreme Court in the exercise of the fundamental rights jurisdiction is empowered under Article 126(4) of the Constitution to grant relief or make directions that it deems "just and equitable" in the circumstances of the case. The Supreme Court in the exercise of fundamental rights jurisdiction acts both as a court of law and a court of equity, ensuring that justice is administered not only according to legal rules but also in accordance with principles of equity. Any suppression or misrepresentation of material facts by a petitioner in a fundamental rights application entitles the Court to dismiss the application *in limine* without going into the merits.

The fact suppressed or misrepresented must be a material fact, not any fact. In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [2011] 2 Sri LR 372, Justice Salam observed at page 410 that "*Material facts are those which are material for the judge to know in dealing with the application as made; materiality is to be decided by court and not by the assessment of the applicant or his legal advisers*". In order to decide whether a fact is material, the pertinent question to ask is whether the decision of the Court would have been different had it been aware of the fact suppressed or misrepresented. However, it is not necessary to prove conclusively that the decision of the Court would definitely have been different. It is sufficient to demonstrate that the fact was material and that its true disclosure could have influenced the decision of the Court.

Qui aequitatem petit, aequitatem facere debet: He who seeks equity must do equity. A petitioner who comes to Court seeking a just and equitable relief in a fundamental rights application must act with *uberrima fides* (utmost good faith) making full disclosure of all material facts frankly and candidly.

Qui venit ad aequitatem debet esse mundis minibus: He who comes into equity must come with clean hands. He who has committed iniquity shall have no equity. His conduct and dealings, past and present, in relation to the matter complained of is a relevant factor. (*The Ceylon Hotels Corporation v. Jayatunga* (1969) 74 NLR 442 at 446, *Felix Dias Bandaranayake v. The State Film Corporation and Another* [1981] 2 Sri LR 287 at 303) However, this maxim does not refer to general misconduct. Instead, it requires that the misconduct must have a necessary connection to the relief being sought. In *Dering v. Earl of Winchelsea* [1775-1802] All ER Rep 140 at 142, Eyre C.B. stated: *"A man must come into a court of equity with clean hands, but when this is said it does not refer to a general depravity; it must have an immediate and necessary connection to the equity sued for; it must be a depravity in a legal as well as in a moral sense*."

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* (*supra*), Justice Salam remarked at page 410:

> *A maxim known almost during the whole of last century and having its origin in equity courts is that one must approach the court with clean hands. The maxim has been so indoctrinated in the legal system that almost all our courts, loath to entertain claims that are tainted with non-disclosure of material facts. It is particularly so when the benefit of the maxim is invoked by the respondent or raised by court ex mero motu.*

Ex turpi causa non oritur actio: No action can arise from an illegal act. *Juri ex injuria non oritur*: A right does not arise from a wrong. If the construction of the wall is unlawful, the petitioner cannot seek equitable relief by claiming that the subsequent demolition is unlawful. Illegality and equity are sworn enemies; they are not on speaking terms and will never see eye to eye.

In *R. Vishwanatha Pillai v. State of Kerala and Others* 2004 (2) SCC 105, the Supreme Court of India stated:

> *A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner.*

The Supreme Court of India, in *Ramjas Foundation and Others v. Union of India and Others* (2010) 14 SCC 38, held that this rule should be applied universally and not be restricted to any particular class of cases, such as writs or injunctions:

> *The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.*

The rationale behind this principle was articulated in the oft-quoted landmark case of *The King v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington; Ex parte Princess Edmond de Polignac* [1917] 1 KB 486. The Divisional Court—the Court of King's Bench—refused the writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before the Court. Viscount Reading C.J. observed at 495-496:

> *[I]f the Court comes to the conclusion that an affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived.*

On appeal, the Court of Appeal affirmed this finding. Lord Cozens-Hardy M.R. in his judgment at page 504 quoted what Lord Langdale and Rolfe B stated in *Dalglish v. Jarvie* 2 Mac. & G. 231 at 238:

> *It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.*

Lord Cozens-Hardy M.R. further stated at page 505:

> *That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an ex-parte application uberrima fides is required, and unless*

> *that can be established, if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say "We will not listen to your application because of what you have done.*

Warrington L.J. stated at 509:

> *It is perfectly well settled that a person who makes an ex parte application to the Court—that is to say, in the absence of the person who will be affected by that which the Court is asked to do—is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him. That is perfectly plain and requires no authority to justify it.*

Scrutton L.J. at pages 514-515 stated:

> *[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts*—facts, *not law. He must not misstate the law if he can help it—the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. this rule applies in various classes of procedure. One of the commonest cases is an ex parte injunction obtained either in the*

Chancery or King's Bench Division. I find in 1849 Wigram V.C. in the case of Castelli v. Cook (1849) 7 Hare 89 at 94 stating the rule in this way: "A plaintiff applying ex parte comes (as it has been expressed) under the contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go." The same thing is said in the case to which the Master of the Rolls has referred of Dalglish v. Jarvie 2 Mac. & G. 231. A similar point arises in applications made ex parte to serve writs out of the jurisdiction, and I find in the case of Republic of Peru v. Dreyfus Brothers & Co. 55 L.T. 802 at 803. Kay J. stating the law in this way: "I have always maintained, and I think it is most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made." A similar statement in a similar class of case is made by Farwell L.J. in the case of The Hagen [1908] P. 189 at 201: "Inasmuch as the application is made ex parte, full and fair disclosure is necessary, as in all ex parte applications, and a failure to make such full and fair disclosure would justify the Court in discharging the order, even although the party might afterwards be in a position to make another application."

However, on the question whether the defaulting party has another opportunity, Scrutton L.J. at page 519 expressed the view that no second application should be allowed after the first application has been refused.

In *Walker Sons & Co Ltd v. Wijayasena* [1997] 1 Sri LR 293 at 301-302, Justice Ismail stated that, once suppression or misrepresentation is shown, "*A party cannot thereafter plead that the misrepresentation was due through inadvertence or misinformation or that the applicant was not aware of the importance of certain facts which he omitted to place before court.*"

This position was reiterated by the Supreme Court of India in *Prestige Lights Ltd v. State Bank of India* 2007 AIR SCW 5350 wherein a court of law was held to be synonymous with a court of equity:

> *It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.*

Suppression of material facts not only warrants dismissal of the application *in limine* but also attracts dealing with the defaulting party for contempt of Court. In *K.D. Sharma v. Steel Authorities of India Ltd* [2008] 10 SCR 454, 472, the Supreme Court of India stated:

> *If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.*

In the Supreme Court case of *Alponso Appuhamy v. Hettiarachchi* (1973) 77 NLR 131, Justice Pathirana, having considered English authorities on this point in great detail, held:

> *When an application for a prerogative writ or an injunction is made, it is the duty of the Petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the Petitioner must act with uberrima fides.*

In the case of *Moosajees Ltd. v. Eksath Engineru Saha Samanya Kamkaru Samithiya* (1976) 79(1) NLR 285, the Supreme Court underscored the paramount importance of full disclosure at the inception of the application. Justice Rajaratnam, holding against the petitioner, articulated its position at pages 287-288:

> *The pleadings in their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the*

> *petitioner has not observed the utmost good faith and has been guilty of a lack of uberrima fides by a suppression of material facts in the pleadings. It was neither fair by this Court nor by his counsel that there was no full disclosure of material facts.*

In the Supreme Court case of *Namunukula Plantations Limited v. Minister of Lands and Others* [2012] 1 Sri LR 365 at 376, Justice Marsoof emphasized that the Court has a duty to deny relief to those who fail to truthfully disclose all material facts.

> *It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.*

At page 374 it was further remarked:

> *If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.*

In *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [1997] 1 Sri LR 360, *Mowbray Hotels Ltd. v. D.M. Jayaratne* [2004] BLR 51, *Fernando v. Commissioner General of Labour* [2009] BLR 74, *Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya* [1986] 1 Sri LR 275, *Fonseka*

v. Lt. General Jagath Jayasuriya [2011] 2 Sri LR 372, *Abee Kuhafa v. The Director General of Customs* [2011] 2 BLR 459, *Sri Lanka Standards Institution v. Commissioner General of Labour and Others* [2020] 3 Sri LR 38, *Werage Sunil Jayasekara v. B.A.P. Ariyaratne* (SC/FR/64/2014, SC Minutes of 05.04.2022, *Premalal & Others v. Commissioner of Examinations & Others* (SC/FR/502/2010, SC Minutes of 05.03.2019), *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [2011] 2 Sri LR 372 similar conclusions were reached.

Supreme Court of India in the case of *Hari Narain v. Badri Das* 1963 AIR 1558 held that if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, the special leave granted to the appellant ought to be revoked and the appeal dismissed.

In *Abeywardene v. Inspector General of Police and Others* [1991] 2 Sri LR 349 at 381, Justice Amerasinghe emphasized that a petitioner who seeks just and equitable relief by invocation of the fundamental rights jurisdiction of the Supreme Court must come with clean hands.

> *Moreover, a person who comes before this Court for just and equitable relief under Article 126(4) of the Constitution must in his act of supplication show the Court clean hands into which relief may be given. The Supreme Court as Chief Justice Sharvananda said in C. W. Mackie v. Hugh Molagoda, Commissioner-General of Inland Revenue and Others [1986] 1 Sri LR 300, 309-311 "cannot lend its sanction or authority to any illegal act. Illegality and equity are not on speaking terms". For the reasons stated, if I might borrow some words from Mr. Justice Nihill in Rewata Thero v. Horatala (1939) 14 CLW 155, 156 "He who seeks equity should come with clean hands".*

> *In that case, the hands of the defendant were described by Justice Nihill as being "very dirty indeed."*

In *Liyanage and Others v. Ratnasiri, Divisional Secretary, Gampaha and Others* [2013] 1 Sri LR 6 at 17, Justice Sathya Hettige, applying the same principle in a fundamental right application proceeded to hold:

> *It must be stated that when the court considers applications on fundamental rights made under Articles 17 and 126 of the Constitution the court has an onerous task to cautiously consider the material placed before court in relation to the infringement of fundamental rights alleged by the petitioner supported by an affidavit. Therefore, it is the paramount duty of the petitioner to disclose all the relevant material facts truthfully. These petitioners have failed and neglected to tender a material document, namely his application for the post of registrar, to court. On a consideration of all the material the court holds that this was a deliberate suppression and there has been no complete disclosure.*

Justice Hettige at page 11 has also referred to a judgment of Justice Bandaranayake delivered in a fundamental rights application, namely, *Gas Conversions (Pvt) Ltd and Others v. Ceylon Petroleum Corporation and Others* (SC/FR/91/2002) where Her Ladyship has held: *"A series of judgments of our courts have enunciated the requirement of complete disclosure and uberrima fides with regard to the applications before Court. It is now a well established principle that when an applicant has suppressed or misrepresented the facts material to an application and when there is no complete and truthful disclosure of all material facts the court will not go into merits of the relevant application, but will dismiss it in limine."*

Justice Dep (as His Lordship then was) in *Ratnasiri Fernando v. Police Sergeant Dayaratne and Others* (SC/FR/514/2010, SC Minutes of 15.12.2014) acknowledged that "*When the Supreme Court exercises fundamental rights jurisdiction it has power to grant just and equitable relief*."

In *Sheriffdeen v. Principal, Visaka Vidyalaya and Others* (SC/FR/1/2015, SC Minutes of 03.10.2016), Justice De Abrew cited an array of authorities to hold that in a fundamental rights application, if the petitioner is found not to have been acted in *uberrima fides* and misrepresented facts, the Court is entitled to dismiss the application on that ground alone. It was a fundamental right application filed after the denial of admission of a child to Visaka Vidyalaya.

> *When a person files a fundamental rights application in court, he makes a declaration to court that all what he has submitted to court in his petition and affidavit was true and moves court to act on the said material and further he enters into a contractual obligation with the court to the effect that all what would be submitted by him by way further documents would be true. Subsequently, if the court finds that his declaration to be false and/or he has not fulfilled the said contractual obligation, his application or the petition should be dismissed in limine. Further when he seeks intervention of court in a case of this nature, he must come to court with frank and full disclosure of facts. If he does not do so or does not disclose true facts, his petition should be rejected on that ground alone.*

Justice De Abrew cited *Jayasinghe v. The National Institute of Fisheries* [2002] 1 Sri LR 277, *Fernando v. Ranaweera* [2002] 1 Sri LR 327, *Sujeewa Sampath and Hasali Gayara v. Sandamali Aviruppola, Principal Visakha Vidyalaya* (SC/FR/31/2014, SC Minutes of 26.3.2015) *and R v.*

Kensington Income Tax Commissioner (1917) 1 KB 486 at 495 in support of the said conclusion.

In *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others* [2002] 1 Sri LR 277, the petitioner filed a fundamental rights application seeking a declaration that his fundamental right to equality under Article 12(1) of the Constitution was infringed by some of the respondents in appointing the 18th respondent as the Director-General of the National Institute of Fisheries and Nautical Engineering. This application was dismissed *in limine* on (a) time bar and (b) lack of *uberrima fides*. In regard to the second ground, Justice Yapa had this to say at 284-287:

> *The allegation that the petitioner was guilty of suppressing material facts from Court is two-fold. Firstly, the petitioner had withheld from Court the letter written by him to the 2nd respondent on 10.07.2000 marked 1R8, seeking a post of Director in the Ministry of Fisheries. Secondly, the petitioner had withheld from Court the fact that he had filed an application in the Court of Appeal seeking identical relief. Some of the contents in the letter 1R8 explain very clearly that the petitioner had no intention of making a claim to be the Director-General NIFNE. (……) Therefore, the conduct of the petitioner in withholding these material facts from Court shows a lack of uberrima fides on the part of the petitioner. When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others [1997] 1 Sri LR 360 the Court highlighted this contractual obligation which a party enters into with the Court, requiring the*

need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations. Vide Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac Ex Parte (1917) 1 KB 486. This principle of uberrima fides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions. (….) It would appear, therefore, that the petitioner in this application had wilfully suppressed material facts from Court by withholding his own letter 1R8 dated 10.07.2000 and by non-disclosure of his application to the Court of Appeal seeking identical relief.

In *Fernando v. Ranaweera, Secretary, Ministry of Cultural and Religious Affairs and Others* [2002] 1 Sri LR 327, the petitioner fearing that the respondents would refuse his application to purchase his official vehicle alleged that there was an imminent infringement of his fundamental right guaranteed under Article 12(1) and sought a direction on the respondents to transfer the ownership of the said vehicle to the petitioner. In addition, he sought an interim relief to direct the respondents to defer the recall of the vehicle until the final determination of the fundamental right application. The application was supported on 26. 01. 1999. The petitioner was granted leave to proceed in respect of the alleged infringement of Article 12(1) of the Constitution and was granted interim relief as prayed for. The application was ultimately dismissed with costs,

inter alia, on the basis of lack of good faith on the part of the petitioner. Justice Yapa stated at 333-335:

> *There is another serious matter that has been observed in this application namely, that the petitioner had withheld from Court the contents of X2. The petitioner filed this application on 18.01.1999, and it was supported and leave to proceed obtained on 26.01.1999. On the same date, counsel for the petitioner had obtained interim relief by seeking a direction on the 1st and 2nd respondents to defer the recall of the vehicle bearing No. 15-9892 until the final hearing and determination of this application. It would appear therefore, that the petitioner had obtained leave to proceed and interim relief by suppressing the contents of X2, which very clearly stated that the petitioner was not eligible to purchase the vehicle he was using in terms of the circular P6. Under normal circumstances X2 would have reached the 1st respondent by about 06.01.1999. The petitioner who was anxiously waiting for the approval from the 3rd respondent to purchase the vehicle in question under the circular would have known the decision conveyed by the 3rd respondent to the 1st respondent by X2. Hence, the petitioner cannot be heard to say that he had no knowledge of the contents of X2. Besides, the timing of the petitioner's application to this Court which was on 18.01.1999, suggests that the petitioner had decided to file this application soon after the 3rd respondent's letter X2, which stated that the petitioner was not eligible to purchase the vehicle in terms of the circular. It should be mentioned here that, had the contents of X2 been made known to the Court, it was very unlikely that the Court would have given the interim relief that was granted to the petitioner. Therefore, it would appear that the petitioner had been guilty of suppressing a material fact from Court. In doing so, the petitioner had misled Court and obtained an interim order which this Court would not have*

made, had the contents of X2, been made known to the Court. Further, it is to be noted that the petitioner had obtained the said interim relief from Court in the absence of the respondents. On the other hand, if the respondents had timely notice of this application, it was very likely that they would have brought to the notice of Court the contents of X2.

The petitioner by withholding from Court the material contained in X2, clearly showed a lack of uberrima fides on his part. When a litigant makes an application to Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. It was highlighted in the case of Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others [1997] 1 Sri LR 360, that the contractual obligation which a party enters into with the Court, requires the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters a falsehood in Court will not be entitled to obtain redress from Court. This is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court.

In this case, it is very clear that the petitioner is not entitled to purchase the vehicle he was using in terms of the Public Administration Circular No. 24/93 (P6). Further, the petitioner by suppressing a material fact from Court had brought about a situation whereby he had continued to use the vehicle in question although he was not entitled to do so. The vehicle No. 15-9892 is government property and under normal circumstances, the petitioner as a law-abiding citizen should have returned the vehicle to the Ministry of

Cultural and Religious Affairs no sooner the 1st respondent requested him to return the vehicle immediately by P8.

Fernando v. Ranaweera, Secretary, Ministry of Cultural and Religious Affairs and Others is a textbook case on how fundamental rights jurisdiction of this Court is abused by people. The petitioner used the vehicle for more than three years during the pendency of the application by obtaining an interim order by suppressing a material fact.

In *Wickramaratna and Others v. University Grants Commission and Others* (SC/FR/13/2015, SC Minutes of 20.07.2016), the petitioners challenged, *inter alia*, the failure on the part of the respondents to permit the petitioners to cancel their registration at various universities for different courses of study for the academic year 2013/14 and to permit them to register for their preferred course of study for the academic year 2014/15 based on the results of their G.C.E. (Advanced Level) Examination 2014. The Court granted leave to proceed on the alleged violation of the petitioners' fundamental right guaranteed by Article 12(1) of the Constitution.

The respondents by way of a motion dated 23.07.2015 produced the schedule in annexe I of the letters requesting the petitioners for registration to universities for the academic year 2013/14. Annexe I, which contained conditions regarding registration, was not produced to Court by the petitioners. One condition of it was "*Please note that if you will get registered to follow this Course of Study for the Academic Year 2013/14, you will not be eligible for University admission based on the results of a subsequent G.C.E. (Advanced Level) Examination.*"

In this backdrop, Chief Justice Sripavan held that the petitioners are disentitled to the relief due to their failure to make frank and full disclosure of material facts.

> *Learned Deputy Solicitor General sought to argue that the Petitioners have suppressed this material fact from this Court by failing to attach Annexe I of the schedule sent to them and referred to in the Petitioners' documents marked P5B to P6. In my view, there is much substance in the contention raised by the learned Deputy Solicitor General. It is well settled that the relief under Article 126 of the Constitution is just and equitable and the Petitioners who approach this Court for such relief must come with frank and full disclosure of facts. If the Petitioners fail to do so and suppress material facts, their application is liable to be dismissed on that ground alone. (….) I therefore hold that failure to attach the Schedule in Annexe I to the letters filed by the Petitioners marked P5B to P6 amounts to "suppression of a material fact" and the application of the Petitioners is liable to be dismissed without proceeding further with the examination on the merits.*

Chief Justice Sripavan echoed the same sentiments in *Karunaratna and Others v. University Grants Commission and Others* (SC/FR/9/2015, SC Minutes of 20.07.2016).

In *Maduwanthi v. District Secretary, Matale and Others* (SC/FR/23/2021, SC Minutes of 18.11.2022, Justice Janak de Silva stated:

> *Furthermore, the Court is exercising its just and equitable jurisdiction under Article 126(4) of the Constitution. It is an established maxim that he who comes into equity must come with clean hands. This doctrine has nothing to do with the general conduct of a party. The misconduct which is condemned should form part of the transaction which is the subject of the dispute. Where the conduct of a party to the litigation is unmeritorious in relation to the transaction forming the subject matter of the litigation, a Court exercising equitable jurisdiction is entitled to refuse any relief to such*

party [See Gascoigne v. Gascoigne (1918) 1 K.B. 223, Tinker v. Tinker (1970) 1 All ER 540]. In this application, the Petitioner has sought a direction that she be appointed as Divisional Secretary of Dambulla. Her unmeritorious conduct in relation to the land in Dambulla suffices for Court to refuse any relief. Hence, I am of the view that the Petitioner is not entitled to any relief.

In the case of *Abeychandra v. Principal, Dharmasoka College, Ambalangoda* (SC/FR/52/2018, SC Minutes of 08.08.2019), where the petitioner came to Court invoking the fundamental rights jurisdiction on the right to equality, Justice Dehideniya stated:

It is emphasized in 'equity', that one who comes into court must come with clean hands. This implies that a party is not permitted to profit by his own wrong. If any party to the case is guilty of an improper conduct, that guilty party is debarred from relief. It is doubtful to this court whether the Petitioner has complied with the circular, in providing information to the school. It appears to the court that, the Petitioner has provided two addresses citing two different residences. This is a contravention of the circular which needs the particulars as to the current place the parents reside with the child.

The purpose of 'clean hands doctrine' is predominantly directed to protect the integrity of the court. This amounts to the disapproval of illegal acts and deny the relief for bad conduct. The intention of the court in prioritizing the 'clean hands doctrine' is to discourage the 'improper conduct' as a matter of public policy. The court looks into the matter whether the specific improper conduct is intentional and the doctrine does not punish the carelessness or mistake. It is evident to this court that, being a public servant, the Petitioner is expected to be more responsible and transparent. The conduct of the Petitioner is prima facie misleading, as to the residence.

It is clear to this court that the Petitioner is not entitled to be privileged under the 'transfer category' of the circular No.22/2017 to admit the child to Grade 1 as she is not similarly circumstanced with the public servants who are transferred and reside in the feeder area of the school after evacuating the former area of living.

Further, it is apparent to this court that, the Petitioner has misrepresented the facts as to the residence, and in violation of the 'clean hands doctrine' in equity. This court is obliged to protect the integrity of the court and simultaneously, bound to prevent the 'improper acts' being committed in the matter of public policy.

In the recent case of *Kayleigh Frazer v. Jayawardena and Others* (SC/FR/399/2022, SC Minutes of 11.05.2023), where the petitioner filed a fundamental rights application alleging violation of several Articles of the Constitution, Justice Murdu Fernando remarked:

A Petitioner has an imperative legal duty and obligation to court and comes to a contractual agreement with court to disclose all material facts correctly and accurately to court. This in my view, is a sacred duty, that should be preserved and protected at all costs. In fact, in "The Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules", under the heading 'Relationship with Court' it is stated as follows:

"51. An Attorney-at-Law shall not mislead or deceive or permit his client to mislead or deceive in any way the Court or Tribunal before which he appears."

Thus, an Attorney-at-Law has a bounden duty not to permit his client to mislead or deceive court, in any manner whatsoever, either by suppression, misleading or misrepresenting facts to court to gain an

advantage, which in my view is detrimental to the interests of justice.

For the aforesaid reasons, I take the view that the application of the petitioner in the instant application shall be dismissed *in limine* on lack of *uberrima fides* and suppression of material facts.

Article 12(1) violation

The complaint of the petitioner is that the respondents violated the fundamental right of the petitioner guaranteed by Article 12(1) of the Constitution, which states "*All persons are equal before the law and are entitled to the equal protection of the law.*"

For completeness, let me now consider whether there is a violation of Article 12(1) based on the facts and circumstances of this case as alleged by the petitioner, even in the absence of suppression of material facts.

Article 12(1) of the Constitution enshrines two fundamental principles of equality: equality before the law and equal protection of the law. While both principles promote equality and non-discrimination, equality before the law emphasizes the uniform application of laws, whereas equal protection of the law emphasizes the uniform application of legal protections and remedies.

It must also be mentioned that equality before the law and equal protection of the law cannot be understood or applied in a purely abstract or strictly literal sense. Not all persons shall be treated alike, but all persons similarly circumstanced shall be treated alike. Equality must be ensured among equals, not unequals. Any attempt to ensure the latter would defeat the very purpose that Article 12(1) seeks to achieve. Classification among persons *per se* does not violate Article 12(1). However, any classification must be based on an intelligible differentia,

which must have a rational relation to the objective it seeks to achieve. Classifications among persons must be reasonable, not arbitrary or unjust. Reasonable classifications for legitimate purposes and differential treatments between such classifications are permissible. What is objectionable and sought to be prevented by Article 12(1) is differential treatment within classifications. (*Palihawadana v. Attorney General* [1978-79-80] 1 Sri LR 65 at 68-69, *Wasantha Disanayake and Others v. Secretary, Ministry of Public Administration and Home Affairs and Others* [2015] 1 Sri LR 363 at 367, *Thilak Lalitha Kumara v. Secretary, Ministry of Youth Affairs and Skills Development and Others* [2015] 1 Sri LR 369 at 376-377)

In *Ferdinandis and Another v. Principal, Vishaka Vidyalaya and Others* (SC/FR/117/2011, SC Minutes of 25.06.2012), Chief Justice Bandaranayake explained that, in order to succeed in Article 12(1) violation, it is necessary for the petitioners not only to establish that they had been treated differently from others, but also that such treatment was so different as the others were similarly circumstanced and there were no grounds to differentiate them from him.

> *Our Constitution has clearly spelt out the concept of equality before the law and there are numerous instances where that right had been accepted and upheld. In the process this Court has also noted that if a person complains of unequal treatment the burden is on that person to place before this Court material that is sufficient to infer that unequal treatment had been meted out to him. Accordingly, it is necessary for the petitioners not only to establish that they had been treated differently from others, but also that such treatment was so different as the others were similarly circumstanced and there were no grounds to differentiate them from him.*

However, the contours of the right to equality have evolved over the years. As Justice Kodagoda has explained in *Wijeratne v. Sri Lanka Ports Authority and Others* (SC/FR/256/2017, SC Minutes of 11.12.2020), we have progressively moved away from the "*reasonable classification doctrine*" to an "*expansive and more progressive definition of the concept of equality, founded upon the concept of 'substantive equality', aimed at protecting persons from arbitrary, unreasonable, malicious, and capricious executive and administrative action.*"

Article 14 of the Indian Constitution is similar to Article 12(1) of our Constitution. In Indian jurisprudence, the doctrine of equality was expanded beyond the principle of reasonable classification. In the case of *E.P. Royappa v. State of Tamil Nadu and Another* 1974 AIR 555, Justice Bhagwati (who later became the Chief Justice of India) articulated this broader interpretation as follows:

> *The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any; attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.*

14, and if it affects any matter relating to public employment, it is also violative of Art. 16.

In *Wickremasinghe v. Ceylon Petroleum Corporation and Others* [2001] 2 Sri LR 409 at 414, Chief Justice S.N. Silva stated that if executive or administrative action is reasonable and not arbitrary, it necessarily follows that all persons in similar circumstances will be guaranteed the equality enshrined in Article 12(1) of the Constitution.

Although the objective is to ensure that all persons, similarly circumstanced are treated alike, it is seen that the essence of this basic standard is to ensure reasonableness being the positive connotation as opposed to arbitrariness being the related negative connotation. The application of this basic standard has been blurred in later cases due to an over emphasis on the objective of ensuring that all persons similarly circumstanced shall be treated alike. The case of Perera vs. Jayawickrema (1985) 1 Sri LR 285 demonstrates the ineffectiveness of the guarantee in Article 12(1) which results from the rigid application of the requirement to prove that persons similarly circumstanced as the Petitioner were differently treated. Such an application of the guarantee under Article 12(1) ignores the essence of the basic standard which is to ensure reasonableness as opposed to arbitrariness in the manner required by the basic standard. If the legislation or the executive or administrative action in question is thus reasonable and not arbitrary, it necessarily follows that all persons similarly circumstanced will be treated alike, being the end result of applying the guarantee of equality. As noted above, the effectiveness of the guarantee would be minimized if there is insistence that a failure of the end result should also be established to prove an infringement of the guarantee. If however there is such evidence of differential treatment that would indeed

strengthen the case of a Petitioner in establishing the unreasonableness of the impugned action.

This position was affirmed in later cases such as *Kanapathipillai v. Sri Lanka Broadcasting Corporation and Others* [2009] 1 Sri LR 406, *Azath S. Salley v. Colombo Municipal Council* (SC/FR/252/2007, SC Minutes of 04.03.2009), *Wijesekera and Others v. Gamini Lokuge, Minister of Sports and Public Recreation and Others* [2011] 2 Sri LR 329, *Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board* (SC/FR/172/2017, SC Minutes of 20.09.2023).

The gravamen of the submission of learned counsel for the petitioner was that the Pradeshiya Sabha acted arbitrarily, without giving a hearing to the petitioner and without following the procedure established in law when they demolished her boundary wall.

According to the documents tendered by the Pradeshiya Sabha with the objections, I am not convinced that the Pradeshiya Sabha treated the petitioner different from the people similarly circumstanced or denied the equal protection of the law or acted arbitrarily. Residents of the area have made written complaints to the Pradeshiya Sabha about water stagnation due to the blockage of drains and the Pradeshiya Sabha has accordingly taken steps to clear the drains (vide R1-R14). The Pradeshiya Sabha has not targeted the petitioner due to extraneous reasons. There is no such evidence. Prior to the actual work complained of, several inspections, surveys etc. have been conducted with the technical team of the Pradeshiya Sabha assisted by a surveyor. The petitioner's sister who is living on the adjoining land depicted in Plan No. 1221 marked P3 had been informed well in advance about this issue. The Pradeshiya Sabha had informed the petitioner's sister in writing that due to the unauthorized wall constructed by her, the drain system has been blocked preventing the natural flow of water. This is evidenced by the letters sent

and copied to the petitioner's sister marked R2-R4. What the petitioner states is that although her sister was informed, she herself was not informed. The petitioner's sister has not joined with the petitioner in this application, nor has she filed another application complaining violation of her fundamental rights. There is no evidence that the petitioner had one boundary wall while her sister, who lives on the adjoining land, had a separate boundary wall on the north of the common land. There is no plan that indicates the existence of any boundary wall.

The petitioner has admitted that the Pradeshiya Sabha officials came to her residence the previous day and informed her brother about the work on the following day. I cannot accept the averment of the petitioner in the petition that "*they had belligerently informed him that the 1st respondent Pradeshiya Sabha was going to demolish the boundary wall on the northern side of my land in the morning of 02.07.2016*." Although the petitioner claims to have made complaints to the police on 01.07.2016 and on 02.07.2016 (vide P7 and P9), these complaints have not been tendered to Court up to now. If they were planning to forcefully demolish the boundary wall, there was no reason for those officials to have come to the petitioner's house and inform it on the previous day.

The position of the Pradeshiya Sabha is that they did not intend to demolish the wall, notwithstanding the fact that it was an illegal construction. However, when they were clearing the drains to address the issue of water stagnation along the northern boundary of the petitioner's land, the wall collapsed. On the facts and circumstances of this case, this explanation is acceptable. The Court tried to settle this matter amicably, and learned counsel for the Pradeshiya Sabha was cooperative in seeking a settlement. However, his position was that, since the construction is unauthorized, the Pradeshiya Sabha cannot lawfully pay compensation

for the damage caused. I have no reason to disagree with this position, both on facts and law.

Conclusion

On the facts and circumstances of this case, I hold that the petitioner has failed to establish that the respondents violated her fundamental right guaranteed under Article 12(1) of the Constitution. I dismiss the petitioner's application with costs fixed at Rs. 25,000 to be paid to the 1st respondent Pradeshiya Sabha.

Judge of the Supreme Court

Vijith. K. Malalgoda, P.C., J.
I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court