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

In the matter of an appeal to the Supreme Court under Article 128 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No. 165/ 2019

SC (SPL) LA No. 207/2016

CA/Writ/294/2007

Herath Mudiyanselage Kapuru Menika

"Sirisevana",

Wewa Pahala, Meewellewa,

Nikaweratiya.

PETITIONER

Vs.

1. The Land Commissioner-General

   Land Commissioner General's Department,

   No. 7, Gregory's Avenue,

   Colombo 7.

2. The Divisional Secretary of Kotawehera

   Divisional Secretariat,

   Kotawehera.

3. Provincial Land Commissioner

   (NorthWestern Province),

   Provincial Land Commissioner's Office

   (N.W.P.),

   Kurunegala.

4. Ven. Mahamithawa Ayupala

   Viharadhipathi, Sri Shailatharamaya,

   Meewellewa.

5. Ven. E. Vijithapala

   C/o. Sri Shailatharamaya,

   Meewellewa.

RESPONDENTS

AND NOW BETWEEN

Herath Mudiyanselage Kapuru Menika

"Sirisevana",

Wewa Pahala, Meewellewa,

Nikaweratiya.

PETITIONER-APPELLANT

Vs.

1. The Land Commissioner-General

   Land Commissioner General's Department,

   No. 7, Gregory's Avenue,

   Colombo 7.

2. The Divisional Secretary of Kotawehera

   Divisional Secretariat,

   Kotawehera.

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   (NorthWestern Province),

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   (N.W.P.),

   Kurunegala.

4. Ven. Mahamithawa Ayupala

   Viharadhipathi, Sri Shailatharamaya,

   Meewellewa.

RESPONDENTS-RESPONDENTS

Before: Mahinda Samayawardhena J.

K. Priyantha Fernando J.

Dr. Sobhitha Rajakaruna J.

Counsel: Nilshantha Sirimanne with Deshara Goonetilleke for the

Petitioner-Appellant

Ganga Wakishta Arachchi, DSG for the 1st-3rd Respondents-Respondents.

Written Submissions: Petitioners-Appellants – 15. 06.2020

1st and 3rd Respondents-Respondents – 03. 09.2020

Argued on: 08.10.2025

Decided on: 12.03.2026

Dr. Sobhitha Rajakaruna J.

Petitioner-Appellant ('Petitioner') instituted the original writ application in the Court of Appeal, seeking, inter alia, a writ of certiorari to quash the order of the Divisional Secretary of *Kotawehera* ('2nd Respondent-Respondent') cancelling the land permit dated 10 January 2007 ('P16'). In its impugned judgment dated 6 September 2016, the Court of Appeal considered whether the Petitioner had satisfied the conditions stipulated in the said permit, independently of any actions by the 4th Respondent-Respondent or his agents in attempting to take possession of the Petitioner's land. During an inquiry conducted by the 2nd Respondent-Respondent, the Petitioner admitted that the land in question was not fertile and that she had not cultivated it for an extended period. Consequently, the decision to cancel the permit remained unaltered. Ultimately, the Court of Appeal held that the 2nd Respondent-Respondent had acted judicially and within the scope of his lawful authority in the circumstances of the case.

The Petitioner's siblings concurrently filed two separate writ applications in the Court of Appeal, bearing Nos. CA/Writ/295/2007 and CA/Writ/293/2007, also contesting the cancellation of the land permits granted to them. It is undisputed between the parties that these two applications arose from substantially similar circumstances as those in the instant Application, in respect of which the impugned judgment was delivered. Notably, the Court of Appeal delivered judgment in CA/Writ/293/2007 on 28 November 2012 in favour of the petitioners in that case. By contrast, in the case (CA/Writ/294/2007) relevant to the instant Application, the Court of Appeal arrived at a determination against the Petitioner. It is pertinent to observe that the parties in CA/Writ/295/2007 had agreed to be bound by the outcome of the judgment in CA/Writ/294/2007.

In reaching its decision in CA/Writ/293/2007, the Court of Appeal took into account most of the same documents relied upon by the parties in the related two cases. The judgment in the said CA/Writ/293/2007, delivered on 28 November 2012 by Anil Gooneratne J. (appearing at pages 207–222 of the brief), examined those identical documents and concluded that bias by predetermination was established and manifest on the part of the relevant Divisional Secretary. The Court further observed that the Divisional Secretary's decision to cancel the permit in question suffered from inadequacy in the provision of reasons.

Consequently, the Court of Appeal in that case held that the rights of the petitioners therein had been violated, in breach of the rules of natural justice.

This Court granted special leave to appeal in the instant Application on the following question of law, as formulated in paragraph 14(c) of the Petition dated 14 October 2016:

> "Did the learned Judges of the Court of Appeal grossly err and/or misdirect themselves by failing to appreciate that the issues of law pertaining, inter alia, to bias and/or dictation and/or abdication of authority and/or failure to provide reasons as contemplated by law and/or that the impugned decisions were prompted by ulterior motives, as specifically raised and demonstrated by the Petitioner, vitiated and/or rendered illegal and null and void the said purported notice of cancellation and/or the purported Order for the cancellation of the Petitioner's said Permit, irrespective of the facts and/or irrespective of whether or not the facts justified the cancellation of the Petitioner's said Permit?"

Additionally, the Court granted leave to raise the following two questions of law, as advanced by the Deputy Solicitor General ('DSG') :

> 1) Was the Court of Appeal correct in holding that the Petitioner had admitted her failure to develop and cultivate the land in breach of the conditions set out in the permit marked 'P1'?
>
> 2) Was the Court of Appeal correct in holding that the decision to cancel the Petitioner's permit marked 'Pl' was done in accordance with the conditions of the permit and the Land Development Ordinance?

The Petitioner instituted proceedings for judicial review in the Court of Appeal, challenging both the order of the 2nd Respondent dated 10 January 2007 (marked 'P16'), which cancelled the land permit issued to the Petitioner, and the prior notice dated 29 September 2006 (marked 'P13'), by which the 2nd Respondent had purportedly sought to effect that cancellation. The principal grounds advanced by the Petitioner in seeking such review were as follows: (i) procedural ultra vires arising from a breach of the rules of natural justice, particularly on account of bias; (ii) abdication of responsibility and/or unlawful dictation by a superior authority; (iii) failure to analyse or evaluate the evidence adduced by the Petitioner, or to give any consideration to the legal or factual submissions raised by the Petitioner, in the impugned

order ‘P16’; and (iv) improper purpose, ulterior motive, and reliance on extraneous considerations in the decisions embodied in the documents marked ‘P16’ and ‘P13’.

With respect to the ground of bias, the Petitioner submits that the 2nd Respondent acted in breach of the principles of natural justice, specifically through bias by predetermination. The Petitioner contends that the documentary evidence placed before the Court—marked ‘2R1’, ‘2R4’, ‘2R5’, ‘2R6’, and ‘2R7’—establishes that the decision to cancel the land permit marked ‘P1’ had already been taken prior to following the due process in the issuance of the formal cancellation order dated 10 January 2007 (‘P16’). In particular, the Petitioner highlights official correspondence and a survey plan dated 10 December 2006, which demonstrate that the land in question had already been earmarked for allocation to a temple (apparently the 5th Respondent’s or his predecessor’s abode) before the show-cause inquiry was even held. Furthermore, the Petitioner asserts that documents ‘2R6’ and ‘2R7’ confirm that the 2nd Respondent commenced cancellation proceedings in accordance with directives issued by the Secretary of a Ministry under the Wayamba Provincial Council. This, the Petitioner argues, shows that both the initiation of the process and the substantive grounds for cancellation were predetermined.

The Petitioner elaborates that these communications preceded both the issuance of the Section 106 notice[1] (of the Land Development Ordinance) and the conduct of the purported inquiry, thereby rendering the entire procedure procedurally unfair and in violation of natural justice. Consequently, the Petitioner maintains that she was effectively denied a fair hearing, as the outcome of the inquiry had been preordained, contrary to the rules of natural justice.

The Petitioner further invites this Court’s attention to the decision of the House of Lords in ***Porter v Magill*** [2001] UKHL 67, where it was held that the applicable test for bias is whether a fair-minded and informed observer, having considered all the relevant facts, would conclude that there was a real possibility that the decision-maker was biased. Applying that test, the Petitioner submits that the documentary evidence referred to above would lead such a fair-

[1] section 106: “If it appears to the Government Agent that a permit-holder has failed to observe a condition of the permit, the Government Agent may issue a notice in the prescribed form intimating to such permit holder that his permit will be cancelled unless sufficient cause to the contrary is shown to the Government Agent on a date and place specified in such notice.”

minded and informed observer to conclude that there was, in reality, bias on the part of the 2nd Respondent in the impugned decisions.

The Petitioner further submits that the 2nd Respondent unlawfully abdicated his statutory authority by acting in accordance with the directives of the Secretary to a Provincial Ministry, an official who held no lawful power or jurisdiction in matters regulated by the Land Development Ordinance. The Petitioner maintains that, under the said Ordinance, supervisory authority is vested exclusively in the Land Commissioner-General, and Section 106 requires the 2nd Respondent to exercise his own independent judgment and discretion. Accordingly, the 2nd Respondent's compliance with instructions from an unauthorised external source amounted to an impermissible fettering of discretion and a clear abdication of his statutory responsibilities.

The Petitioner further contends that, although a show-cause inquiry was duly held, during which the Petitioner tendered evidence and advanced submissions through counsel, the impugned cancellation order marked 'P16' did no more than restate the original allegations, namely the alleged failure to develop or possess the land. Crucially, the order contains no analysis whatsoever of the evidence presented, no findings on the disputed facts or issues, and no intelligible reasons for the decision. The Petitioner contends that it fails entirely to evaluate the material placed before the 2nd Respondent, to resolve contested matters, or to indicate whether the Petitioner's representations were accepted, rejected, or even considered.

On the contrary, the Respondents maintain that Clause 8 of the Permit in question expressly required the permit holder to "cultivate and develop" the land to the satisfaction of the Divisional Secretary. The Respondents further contend that the Petitioner failed to fulfil this condition and, indeed, had formed the opinion, even before the permit was issued, that the land was uncultivable and possessed little agricultural value. According to the Respondents, a subsequent field inspection report dated 8 April 2006 ('2R3') verified that the land had neither been cultivated nor developed and remained overgrown with vegetation. The Respondents submit that, in accordance with Section 106 of the Land Development Ordinance, the Petitioner was duly served with notice and provided with an opportunity for

an inquiry. At that inquiry, she participated fully, adduced evidence, and raised no objections to the procedure nor made any claim of being denied a fair hearing.

The Respondents further submitted that, although the Petitioner responded to the show-cause notice, she failed to adduce any evidence demonstrating actual cultivation of the land. Instead, she is said to have asserted that the land was inherently incapable of cultivation. The Respondents also point out that, pursuant to Section 110(1) of the Land Development Ordinance, the Government Agent is vested with the power to cancel a permit if, following due inquiry, he is satisfied that a condition of the permit has been violated. In support of their position, the Respondents place reliance on the decision in ***Kalu Banda v. Upali*** [1999] 3 Sri L.R. 392.

The Respondents firmly reject the Petitioner's claim of inadequate reasons for cancelling the land permit, asserting that the permit explicitly required cultivation and development of the land to the satisfaction of the Government Agent (or Divisional Secretary). They rely on the field inspection report dated 8 April 2006 ('2R3'), which confirmed no such cultivation or development had occurred, with the land remaining overgrown. Furthermore, the Respondents contend that the Petitioner omitted to disclose that the cancellation process was triggered by requests from her own relatives for permits in their names, prompting an inspection that exposed the non-compliance.

The inquiry report dated 15 November 2006, at pages 428-429 of the brief, contains the evidence/statement given by the Petitioner at the inquiry held under the Land Development Ordinance. She states that the land could not be cultivated because persons attending the adjoining temple used her land as a parking area. This position is consistent with her letter marked 'P11' at page 535 of the brief. Her position is further consistent with documents marked 'P5', 'P7', 'P8(a)', 'P8(b)', 'P8(c)', 'P9' and 'P10'. The Court of Appeal has declined to consider these documents on the basis that the acts complained of therein are not attributable to the Government. While that may be so, the Court appears not to have taken into account that these letters, read together with the Petitioner's statement at the aforesaid inquiry, demonstrate that the failure to cultivate was not attributable to any fault on her part.

The Respondents have failed to address their mind to the reasons adduced by the Petitioner for her failure to cultivate and have found her to be in violation of the conditions of the permit.

In the impugned judgment, the Court of Appeal held that, in light of the Petitioner's own admission that the land was infertile and incapable of development or cultivation, the 2nd Respondent was not obliged to undertake any detailed analysis of the evidence or to provide elaborate reasons for the cancellation. The Court further observed that, once the Petitioner conceded the land's inherent unsuitability for agricultural use, no further obligation arose on the part of the Divisional Secretary to evaluate evidence or articulate additional reasoning, as this would run counter to the basic statutory purpose of ensuring productive utilisation of alienated land. Consequently, the Court of Appeal concluded that the Divisional Secretary had acted in full accordance with the provisions of the Ordinance, and that the impugned decisions of the Respondents were not ultra vires.

The Petitioner states that in *De Smith's Judicial Review:* Sixth Edition (London: Sweet & Maxwell) [2007] the standards of reasoning were explained as follows (at pages 423 to 425):

> "It is clear that the reasons given must be intelligible and must adequately meet the substance of the arguments advanced. It will not suffice to merely recite a general formula or restate a statutorily prescribed conclusion. It is also preferable if reasons demonstrating a systematic analysis has been undertaken by the decision maker".

Thus, it is the contention of the Petitioner that the 2nd Respondent's failure to provide any reasonable basis for the cancellation materially impaired the Petitioner's ability to exercise that right, rendering the impugned order inadequately reasoned, procedurally unfair, and liable to be quashed.

It is observed that, Christopher Forsyth and Julian Ghosh in *Wade & Forsyth's Administrative Law* (12th edn, OUP 2023) at pp.422 and 426, has stated:

"The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions.[2] Nevertheless, there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, they may be unable to tell whether it is reviewable or not, and so they may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary person's sense of justice. It is also a healthy discipline for all who exercise power over others. 'No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions.[3]" (at p.422)

"The courts often warn themselves against imposing too onerous a duty to give reasons. Thus there are cases in which reasons need not be given even where fairness may appear to require reasons. Reasons do not need to be given for refusals of appointments or promotions or examination failures[4], or for a reduction of research funds depending upon academic judgment.[5]" (at p.426)

The Court of Appeal, while expanding the grounds of review in ***Capital Trust Holdings Limited and Another v. Securities and Exchange Commission of Sri Lanka and Another***[6] took the view that the 'right to know the opposing case' is a key aspect of the rules of natural justice. It advocated for a more flexible evaluation, rather than strictly adhering to traditional, highly

[2] *R v. Home Secretary ex p Doody* [1994] 1 AC 531 at 564E ('the law does not at present recognise a general duty to give reasons for administrative decisions' (emphasis added), No general duty has developed since *ex p Doody: R v. Minister of Defence ex p Murray* [1998] COD 134

[3] Administration under Law (a JUSTICE booklet), 23. For further discussion of the point see [1998] *JR* 158; (1998) 18 *OJLS* 497

[4] See *exp Cunningham* (above) at 316 (Lord Donaldson MR). But in *Bradley v. A-G* (1988] 2 NZLR 454, non-promotion of a naval officer was held to entitle him to a hearing and in *R v. University of Cambridge exp Evans* (1998) ELR 515 Sedley] considered it 'arguable' that non-promotion of a university lecturer required reasons (*sed quare*). Legitimate expectation may make a difference, as it did in the New Zealand case.

[5] *R v. Higher Education Funding Council ex p Institute of Dental Surgery* [1994] 1 WLR 242 but since doubted on this point by Sedley LJ himself (Wooder, above, para. 41).

[6] CA/WRIT/465/2022 decided on 12 December 2023.

technical review processes. I have observed in the said Judgement that:

> 'Stemming from the above dicta, I take the view that when evaluating a defence on the "right to know the opposing case", it is necessary to revisit the traditional approach taken by review courts, which is highly technical in nature. The "right to know the opposing case" can be considered as an illustrated dimension under the Rules of Natural Justice. To my mind, the review court, before making an order on such an aspersion/defence, should deviate to a certain extent from the customary process and assess whether the objector is in a position to establish a sufficient defence at least during the review proceedings based on the fresh material provided to Court by the opponent.'

This approach illustrates the Review Court's position in judicial review proceedings, whereby it actively develops new grounds for review or recognises emerging rights, distinct from those explicitly enshrined in the fundamental rights chapter of the 1978 Constitution of Sri Lanka. The departure from legality-based to rights-based writ jurisdiction through judicial activism marks a significant evolution in common law systems. Upon a broad survey of the jurisprudence in England, India, and Sri Lanka, it is observed that certain rights, identified by Review Courts in rights-based applications includes the "right to know the reasons".

In the circumstances, I take the view that the impugned judgment failed to adequately address the Petitioner's well-substantiated grounds, particularly the principles governing the duty to give reasons in administrative decisions affecting rights under the Land Development Ordinance. While the Ordinance does not impose an absolute statutory obligation to provide elaborate reasons in every case, fairness and the rules of natural justice, especially where a decision involves cancellation of a permit after inquiry, demand intelligible, adequate reasoning that engages with the evidence, submissions, and contested issues, rather than a mere restatement of allegations or a conclusory formula.

The Court of Appeal's reliance on the Petitioner's isolated statement regarding the land's infertility and non-cultivation as a decisive "admission" justifying the absence of detailed analysis or reasons was misplaced and unfair. Such a statement, when viewed in the full evidentiary context (including documents suggesting predetermination and external influence), cannot be elevated to an unequivocal concession dispensing with the need for reasoned consideration. Moreover, the documentary record, including correspondence and

plans predating the show-cause process, raises a real possibility of bias by predetermination and unlawful abdication of discretion or dictation by higher authorities.

For the reasons set out above, I am satisfied that the Court of Appeal erred in law in dismissing the Petitioner's application for judicial review. In the circumstances, the impugned decisions of the 2nd Respondent, embodied in the notice marked 'P13' and the cancellation order marked 'P16', are vitiated by procedural unfairness, breach of natural justice, and ultra vires conduct. Thus, I answer the aforesaid first Question of Law in the affirmative and the other two Questions of Law (raised by the learned DSG) in the negative. The judgment of the Court of Appeal dated 6 September 2016 is accordingly set aside. A writ of certiorari is issued quashing the said notice marked 'P13' and the order to cancel the permit in question made by the 2nd Respondent-Respondent, on 10 January 2007 marked 'P16'.

As conceded by all the parties in the case bearing no. CA/Writ/295/2007, they shall be bound by this judgement delivered in the instant Application. The appeal is allowed.

Judge of the Supreme Court

Mahinda Samayawardhena J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando J.

I agree.

Judge of the Supreme Court