

**0IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Appeal against
the Judgment dated 29th April 2014
of the Court of Appeal Application
No. CA(WRIT)04/2012.

Herath Mudiyansele Piyasena
alias Herath Mudiyansele
Piyasena Kaluhendiwela,
Wessagiriya, Kaluhendiwala,
Thalwatte Gedera
Petitioner

Vs.

S.C. Appeal No.204/2014
SC (Spl) LA No. 95/2014
Court of Appeal Application
No. CA(WRIT) 04/2012

1. Divisional Secretary,
Divisional Secretariat,
Polgahawela.
2. Commissioner General of Land,
Land Commissioner General's
Department,
No.7, Hector Kobbekaduwa
Mawatha,
Colombo 07.
3. The Secretary,
Ministry of Lands and Land
Development,
Battaramulla.
Respondents.

AND NOW BETWEEN

Herath Mudiyansele Piyasena
alias Herath Mudiyansele
Piyasena Kaluhendiwela,
Wessagiriya, Kaluhendiwala,
Thalwatte Gedera
Petitioner-Appellant

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Polgahawela.
2. Commissioner General of Land,
Land Commissioner General's
Department,
No.7, Hector Kobbekaduwa
Mawatha,
Colombo 07.
3. The Secretary,
Ministry of Lands and Land
Development,
Battaramulla.

Both

Presently at 'Mihikatha Madura',
Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla
Respondent-Respondents.

BEFORE : S. THURAIRAJA, PC, J.
A. H. M. D. NAWAZ, J.
ACHALA WENGAPPULI, J.

COUNSEL : Chula Bandara with Ms. Gayathri Kodagoda and
Anuradha Dias for the Petitioner-Appellant
Ms. Chaya Sri Nammuni SSC for the Respondent-
Respondents

ARGUED ON : 01st November, 2021

DECIDED ON : 27th February, 2026

ACHALA WENGAPPULI, J.

The Petitioner-Appellant (hereinafter referred to as “the Appellant”) invoked the jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution primarily to seek issuance of a Writ of *Mandamus* on the 1st, 2nd and 3rd Respondent-Respondents (hereinafter referred to as the 1st, 2nd and 3rd Respondents respectively) compelling them to issue a Land Grant in respect of a “... *land called Malwalgalehena alias Ambakumbura Pillawa*” to the Petitioner.

In delivering the impugned order, the Court of Appeal, proceeded to dismiss the petition of the Appellant. Aggrieved by that order, the Appellant sought Special Leave to Appeal against the said order of the Court of Appeal, by filing of the instant petition.

On 31.10.2014, after hearing the parties; this Court was pleased to grant Special Leave to Appeal to the Appellant on three questions of law,

that were formulated by him and described in sub paragraphs “b”, “d” and “e” of his petition dated 10.06.2014.

The said questions of law are as follows;

- i. Did the 3rd Respondent act out side/ or in excess of his authority to hold an inquiry on 29.06.2011 to cancel the grant issued by His Excellency the President after the grant had been signed by the President?
- ii. Has the 3rd Respondent erred in law by recommending the acceptance of the Land Grant issued in the name of the Appellant in terms of Section 3 of the State Lands Ordinance No. 13 of 1949?
- iii. Did the 3rd Respondent mislead the officials of the Presidential Secretariat by stating that the grant issued in the name of the Appellant could be revoked under Section 3 of the State Lands Ordinance No. 13 of 1949, which all members of the Appellant’s family had failed to agree to surrender such land to the State?

In view of the scope of the questions of law, it is necessary to make a brief reference to the factual situation as disclosed by the pleadings filed before the Court of Appeal.

A land called *Malwelgalehena* alias *Ambakumbure Pillawa*, which is in an extent of 1 Acre and 05.2 Perches, and commonly owned by the Appellant, his siblings *H.M. Punchi Banda*, *H.M. Sumanawathie* and *H.M. Bandara Menika* in equal shares. In 1977, this land was acquired by the State for the declared public purpose of constructing a playground to

Maningamuwa Junior School. The co-owners including the Appellant were paid compensation for the acquisition of their land. However, the said school was closed down around in the year 1992 and the land so acquired remained idle.

In August 2007, the Appellant presented a written request (P5) to the then Hon. Minister of Land and Land Development, requesting to divest the ownership of the said land back to him. He was prepared to pay back the monies paid by the State, as compensation, at the time of its acquisition.

The 3rd Respondent, on 17.09.2007, called for the recommendation of the 1st Respondent over the said request made by the Appellant (R1). The Appellant, by his letter dated 15.06.2008, informed the 1st Respondent that the other co-owners, namely *H.M. Punchi Banda* (represented by his eldest son *S.B. Kaluhendiwela*), *H.M. Sumanawathie* and *H.M. Bandara Menika*, have informed in writing, that they would make no claim to the ownership of that land. The 1st Respondent, by his letter dated 29.07.2009 (R3) conveyed this information to the 3rd Respondent and recommended that the land could be divested in favour of the Appellant.

In order to proceed with the Appellant's request, the 1st Respondent informed the former to deposit a sum of Rs. 26,009.28 and thereby facilitate the release of the land. The Appellant however did not agree with that amount and informed the 1st Respondent on 18.12.2009, that he could deposit only Ra.16,000.00. This dispute over the sum of monies appears to have erupted over the improvements made to the land by a certain construction effected by the Ministry of Education.

On 24.12.2009, *S.B. Kaluhendiwela*, son of *H.M. Punchi Banda* informed the 1st Respondent of the retraction of the consent of his and other family members they have already given to the Appellant that they have no objections to the land being released only to him. In that letter nine persons who have an interest, which devolved from the original three out of the four owners to the land appears to have objections to the Appellant's request.

The 1st Respondent thereupon conveyed this development to the 2nd Respondent *via* telephone, in addition to sending a letter dated 29.12.2009 (R6). In responding to that letter, the 2nd Respondent instructed the 1st Respondent to conduct an inquiry into the objection raised by *S.B. Kaluhendiwela* by letter dated 06.01.2010 (R7). The Appellant was notified to appear before the 1st Respondent for an inquiry over the said objection by letter dated 05.01.2010 (P8).

An inquiry was conducted by the 1st Respondent on 24.02.2010 (R8). The Appellant did not participate in that inquiry. During that inquiry, the parties have reiterated their objection to the release of the land to the Appellant in its totality and have strongly resisted the demarcation of the land bisecting it in two allotments by carving out a $\frac{1}{4}$ share for the Appellant and leaving out the remaining $\frac{3}{4}$ share. The findings made by the 1st Respondent consequent upon the said inquiry were conveyed to the 3rd Respondent on 26.02.2010 (R9).

The Appellant personally made representations to the 2nd Respondent, who thereupon informed the 1st Respondent on 02.03.2010 (P9) that since the Hon. Minister of Lands has already sanctioned the

divesting of the State land, he cannot take note of the objections of other parties at that stage (P9).

On 06.01.2011, by a letter (P10), the 2nd Respondent instructed the 1st Respondent that a Land Grant has been made with the approval of His Excellency the President in favour of the Appellant in relation to the disputed State land and to take steps to register the said instrument in the Land Registry. Incidentally, on the same day, by a letter addressed to the provincial land Commissioner (R10), the 3rd Respondent directed the former to personally conduct an inquiry into the appeal presented by one *Nanda Kumarihamy Amaratunge* on this issue.

The 3rd Respondent, by his letter dated 27.09.2011 (R11), addressed to the Secretary to the President, conceded that the 2nd Respondent's Department has proceeded to complete the paper work in order to divest the State land in favour of the Appellant, acting in terms of Section 194(2)(c) of the State Lands Ordinance, despite the objections by the other former co-owners to that land. It also indicates that the issuance of the Grant to the Appellant was deferred on the instructions of the Hon. Minister of Lands and after an inquiry to which all the relevant parties have attended, the 3rd Respondent has decided that it was unreasonable to divest the land only in favour of the Appellant and it should be divested in favour of all four original owners. The 3rd Respondent further requested to cancel the Land Grant made in favour of the Appellant to facilitate the process of issuing four separate Land Grants to the four original owners.

The Presidential Secretariate, by letter dated 12.01.2012 (R12), informed the 3rd Respondent that it had taken steps to cancel the Land

Grant issued in favour of the Appellant and, instructed the latter to take over the ownership of the said land, in compliance with the approval granted by his Excellency the President, to do so.

It is against this backdrop only the Appellant sought Writ of *Mandamus* “... directing the 1st, 2nd and 3rd Respondents to hand over the said Land Grant issued in the name of the Petitioner [now Appellant] relating to the said land called *Malwalgalehena alias Ambakumbura Pillawa* to the Petitioner according to law.”

Learned Counsel for the Appellant contended that, instead of making a divesting order under Sections 39 and 39A of the Land Acquisition Act, the Respondents have resorted to the provisions of the State Lands Ordinance to issue a Land Grant. It is the position of the Appellant, once His Excellency the President appended his signature to that instrument, no objections could be considered for the issuance of the said Grant, as once such a Grant is made the President could not revoke or cancel such grant as no legal provisions are provided in the Land Grants Act to do so.

The Respondents have strongly resisted the application of the Appellant seeking Writ of *Mandamus* before the Court of Appeal. It was their contention that they have acted in *bona fide* in reporting the relevant facts and circumstances, in order to ensure that the final determination on the issuance of the Grant does not infringe upon the rights of other co-owners and therefore is justified in the circumstances.

The Court of Appeal, having noted that “ [A] *mandamus* is only granted to compel performance of a duty of a judicial character where there has

been a refusal to perform it in any way and not where it has been done in one way rather than the other ..." in its impugned judgment, and concluded that it is "*... before issuing a Writ of Mandamus is entitled to take into consideration the consequences which the issue of the writ will entail*" and therefore "*... A Mandamus will not issue where it would be futile and could not be obeyed.*"

Thus, the primary reason attributed by the Court of Appeal in dismissing the Appellant's application was that it became futile to issue a Writ of *Mandamus* under the circumstances.

I am unable to find a valid reason to hold otherwise, after undertaking a careful consideration of the sequence of events that led to the issuance of the Land Grant and its eventual cancellation by His Excellency the President.

In this instance, the petition filed before the Court of Appeal by the Appellant, seeking a public law remedy, is dated 20.12.2011. The last correspondence the Appellant had with the 1st Respondent annexed to the said petition is dated 01.02.2011 by which he requested for a date and time for him to present himself before the officer to receive the Land Grant issued in respect of that State land.

The Respondents have filed their Statement of Objections on 05.09.2012. The Respondents have annexed the letter dated 12.01.2012, addressed to the 3rd Respondent by the Presidential Secretariat (R12), informing him that the Land Grant made in favour of the Appellant has been cancelled by His Excellency the President.

The documents relied on by the Appellant do not provide any indication that he was aware of the said cancellation of the Land Grant.

However, when this information was disclosed by documents "R12", the Appellant in his Counter Affidavit stated "*... once a grant has been issued under the hand of the President, such grant can be revoked only where the Grantee act contrary to the conditions laid down in such grant or successors failed to succeed to such land. I further state that law does not permit even the President to cancel a grant once it has been issued under the hand of him unless law specifically provides provisions to do so. I further state that the 3rd Respondent acted arbitrary and forwarded his wrongful recommendations to the Secretary to the President misconceiving facts.*"

The position taken by the Appellant, in response to the situation described in R12, is in effect to challenge the process by which the Land Grant was cancelled. The Appellant also challenged the legality of the cancellation of the Land Grant issued to him. This brings the issue of the primary relief sought by the Appellant, by invoking the jurisdiction conferred on the Court of Appeal under Article 140.

It is already noted that the primary relief sought by the Appellant is the issuance of a Writ of *Mandamus* "*... directing the 1st, 2nd and 3rd Respondents to hand over the said Land Grant issued in the name of the Petitioner [now the Appellant] relating to the said land called Malwalgalehena alias Ambakumbura Pillawa to the Petitioner according to law.*"

With the disclosure of R12 by the Respondents and the legal challenge mounted by the Appellant over the cancellation of the Land Grant, makes it clear that there was no Land Grant to be handed over to the Appellant is in existence any longer. Thus, it is clear that the issuance of Writ of *Mandamus* would be a futile exercise as it is an order of Court which could not be obeyed. The legal challenge mounted by the Appellant

in his Counter Affidavit, in response to R12, too is a futile exercise as he did not seek to nullify the course of action and the decision arrived at by the Executive to cancel the Land Grant, in the absence of him seeking a Writ of *Certiorari* to quash that process.

The Appellant should have advised himself as to the continuity of his application seeking only a Writ of *Mandamus*, with the substantial change of character resulted in with the issuance of R12. However, despite the obvious futility of the proceedings, the Appellant nonetheless pursued only for the issuance of a Writ of *Mandamus*, directing the Respondents to hand over a non-existent Land Grant.

In view of the reasoning contained in the preceding paragraphs of this judgment, I proceed to answer the questions of law on which the instant appeal was heard as follows;

- i. Did the 3rd Respondent act out side/or in excess of his authority to hold an inquiry on 29.06.2011 to cancel the grant issued by His Excellency the President after the grant had been signed by the President?

No.

- ii. Has the 3rd Respondent erred in law by recommending the acceptance of the Land Grant issued in the name of the Appellant in terms of Section 3 of the State Lands Ordinance No. 13 of 1949?

Does not arise for consideration in view of the reasons stated in the judgment.

- iii. Did the 3rd Respondent mislead the officials of the Presidential Secretariat by stating that the grant issued in the name of the Appellant could be revoked under Section 3 of the State Lands Ordinance No. 13 of 1949, which all members of the Appellant's family had failed to agree to surrender such land to the State?

Does not arise for consideration in view of the reasons stated in the judgment.

The judgment of the Court of Appeal dated 29.04.2014 is hereby affirmed.

The appeal of the Appellant is accordingly dismissed. I make no order as to costs.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A. H. M. D. NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT