

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

In the matter of an application under Article
140 of the constitution for an order in the
nature of writs of Certiorari and Mandamus.

Mohamed Faizi
No. 164, Dutugamunu Street
Kohuwela.

C.A. (Writ) Application No.504/2008

PETITIONER

Vs

1. Municipal Council
Dehiwela-Mt. Lavinia
Dehiwela.

2. Mr. Dhanasiri Amarathunga
The Mayor,
Municipal Council
Dehiwela-Mt. Lavinia
Dehiwela.

RESPONDENTS

BEFORE : Deepali Wijesundera J.

COUNSEL : Kamal Dissanayake with Surani
Amarathunga for the Petitioner.
Manohara De Silva PC with
Nimal Hettipola for the 1st and 2nd
Respondents.

ARGUED ON : 30th September, 2014

DECIDED ON : 21st November, 2014

Deepali Wijesundera J.

The petitioner has filed this application seeking a writ of Certiorari to quash the decision of the Planning Committee of the 1st respondents' marked **X12** rejecting the application of the petitioner to develop the land described in plan marked **X11**. Also petitioner is seeking a writ of Mandamus to direct the respondents to include the petitioner's name in the 1st respondent council's Assessment register.

The learned counsel for the petitioner submitted that he is the legitimate owner of the land described in his application to the respondents for approval for development and that by refusing to grant

him permission to develop the said land the respondents have caused serious violation of the principles of natural justice. He further submitted the respondent's refusal was due to a pending case regarding the ownership of the land and that there is no such case for the subject matter in the instant case. He stated that there is no provision in the Municipal Council Ordinance to say that the Municipal Council can not approve a plan for development when there is a case pending in respect of a land seeking to be developed.

The petitioner further submitted that he was not given a hearing by the respondents thereby violating the principle of *audi alteram partem*.

The petitioner's counsel stated that the petitioner who is a tax payer of the 1st respondent authority is rightfully entitled to get his development plan approved. By refusing to approve the said plan his legitimate expectations were denied.

The learned Presidents Counsel for the respondents submitted, that there are lots in plan marked X2 from A to J and lot A is described as a quarry, which was used to dump garbage collected within the 1st

respondent's council limits over the years. He further stated that the original owner of the petitioner's land was Alice Peiris who owned only 7.2 Perches of the said land, but later she has come to own a larger land with an extent of A:0 R03:P392 for which there is no title deeds to show how she came to own a larger land.

The counsel for the respondents' submitted that although the petitioner claims ownership to the said land Assessment No. 20/1, Sirigal Mawatha the name of the owner does not appear in the report marked **X6**. Marking **R3** the respondents stated that the folio of the Assessment register of the 1st respondent council does not show the name of the owner. He further stated that neither the petitioner nor his purported predecessors in title have registered their names and address as owners of the said property in accordance with the Local Government by laws (**R2**).

Respondents further submitted that the relevant land was an abandoned quarry which was later filled up with garbage collected within the 1st respondent council over the years and that the soil is not suitable for development approval (**R9** and **R10**). The respondent council is claiming the entirety of the subject matter and the application for development approval was refused.

The petitioner's counsel in his submission in one place stated that there is no court case for the land in issue and on the same breath stated that the Municipal Councils' Ordinance does not say a development plan can not be approved when there is a case pending for the subject matter. One can not blow hot and cold in a legal argument one has to be specific. According to the petitioner any person who claims a land can get a building plan approved producing deeds. He claimed that he is a tax payer and he had a legitimate expectation to get his plan approved. Just being a tax payer does not give one a right to get a plan approved to a land where there is no clear title and when the conditions are not fulfilled. The title he has to get by a decree in the District Court this court can not decide on his title or possession.

The petitioner stated that his application was rejected over the counter and the *audi alteram partem* principle was violated. On perusal of documents marked **X7, X8** shows that it has not been so.

On perusal of documents **X20** and **X21** it is evident that the petitioner has applied to be registered as owner of the disputed land only in 2007. His predecessor has not been registered prior to this according to Local Government by laws. **X5** document shows that it is

only a transfer deed which does not show the pedigree of the entire land.

The respondents have stated the soil of the disputed land is not suitable for the development project as it has been filled with garbage which they said was one reason to refuse the petitioner's application. This is something the 1st respondent had to consider before a project is approved.

On perusal of documents and the submission I see no reason to grant the petitioner relief prayed for since the petitioner has not established grounds for a writ of certiorari or Mandamus.

For the afore stated reasons the petitioner's application is dismissed with costs fixed at Rs. 50,000/=

JUDGE OF THE COURT OF APPEAL.