

**ENVIRONMENTAL FOUNDATION LTD.
v.
THE LAND COMMISSIONER AND OTHERS**

COURT OF APPEAL
S. N. SILVA, J., AND
D. P. S. GUNASEKERA, J.
CA 573/92
JULY 30, 1992.

Disposition of Crown Land – Requirement of notification in the Gazette – Environmental impact – Restraining order – Regulation 21 (2) made under section 96/6 of the Crown Land Ordinance – Section 24 (1) (as amended) of the Interpretation Ordinance – Inherent power of the Court.

Regulation 21 (2) made in terms of section 96/6 of the Crown Lands Ordinance obligates the Land Commissioner, unless otherwise directed by the Minister to cause a notification of every proposal to make a grant or lease of any crown land on preferential terms to be published in the Gazette.

Section 24 (1) of the Interpretation Ordinance as amended does not remove the inherent power of the Court to make an interim order in the nature of a stay order restraining an administrative authority from proceeding with a particular course of action pending determination of an application, where the final relief will otherwise be rendered nugatory.

In view of the environmental impact of the proposed lease of state land an interim order can issue against the 1st respondent (Land Commissioner) and 2nd respondent (Minister of Lands, Irrigation and Mahaweli Development) restraining them from executing a lease in respect of state land in favour of the 3rd respondent a private company (Aitken Spence Hotel Management (Pvt.) Ltd.).

The 3rd respondent being a private company cannot directly be affected by relief that will finally be granted in an application for judicial review. If the 3rd respondent continues with any construction work on the land it will do so at its peril.

APPLICATION for Writs of Certiorari and Mandamus.

H. L. de Silva, P.C. with Lalanath de Silva and Ananda Nanayakkara for petitioner.

K. N. Choksy, P.C. with Romesh de Silva, P.C., Britto Muthunayagam and Harsha Amerasekera for 3rd respondent (Aitken Spence Hotel Management (Pvt.) Ltd.).

Cur. adv. vult.

July 30, 1992.

S. N. SILVA, J. read the following order of Court :

The petitioner has filed this application for Writs of Mandamus and Certiorari against the Land Commissioner and the Minister of Lands. The petitioner has also sought interim relief against these respondents and the 3rd respondent being a private company engaged in hotel management. The petitioner is a company and claims to file this application in the public interest in keeping with the objects of the company that are directed mainly at the preservation of the environment. The petitioner has issued notice of this application as required by the Rules, in view of the interim relief that is prayed for. Mr. Choksy, P.C., is appearing for the 3rd respondent pursuant to this notice. He has objected to the grant of interim relief against the 3rd respondent and also against the 1st and 2nd respondents. The 1st and the 2nd respondents have not appeared before Court although the same notice has been issued on them. They have also tendered no objection to the grant of interim relief against them.

The case of the petitioner is that Aitken Spence Hotels Ltd. issued a prospectus in February, 1992 (P4) whereby the public were invited to subscribe to shares in the company. The prospectus contained a section titled " Profile of the Company ". In this section it is stated that the company plans to construct a 150 roomed 4-Star class Hotel at Kandalama, Dambulla, by a fully owned subsidiary. It is stated further, under the sub-heading " Lands and Buildings " that 50 " acres of land at Kandalama, Dambulla will be utilised for the construction of the new hotel. This land has been

leased to Aitken Spence Hotel Managements (Pvt.) Ltd. for a period of 50 years (which is renewable) by the Ministry of Lands, Irrigation and Mahaweli Development ". On receiving this information, the petitioner being concerned with the environmental impact of the construction of the proposed hotel made representations to the relevant authorities to ascertain whether such lease has been given and if so the conditions of the lease. The petitioner has produced copies of letters addressed not only to each of the respondents but also to the Secretary, Ministry of Mahaweli Development, Secretary, Ministry of Lands, Minister for Environment and Parliamentary Affairs and the Surveyor-General, in this regard. There has been no response to these letters specifying whether any lease has been granted as claimed in the prospectus (P4) and the conditions to be included in such lease. Learned President's Counsel for the petitioner submitted that if such lease is to be granted the provisions of Regulation 21, made in terms of section 96 (6) of the Crown Lands Ordinance, that relate to, " Sales, Leases and Other Dispositions of Crown Land " should be complied with. In terms of Regulation 21 (2), the Land Commissioner is required, unless otherwise directed by the Minister, to cause a notification of every proposal to make a grant or lease of any crown land on preferential terms, to be published in the Gazette. The Regulation also provides for the matters to be specified in the notice, which includes the date on or before which objections to the proposal will be received by the Land Commissioner. The petitioner has produced marked P34 to P50 notices that had been published under this Regulation with regard to other proposed leases. In particular P39, relates to a notice published in terms of this Regulation with regard to the proposed lease for a period of 30 years of an extent of about 2 acres for the purpose of constructing a Tourist Guest House and cultivating fruit trees, in the Kandalama village at Dambulla. On this basis, it is submitted that no exception should be made if a lease is to be given to the 3rd respondent of 50 acres of land for the construction of the proposed hotel. The petitioner, therefore submits that he is entitled in law to a Writ of Mandamus as prayed for in prayer (a) requiring the 1st respondent being the Land Commissioner to cause a notification to be published in accordance with Regulation 21 (2) regarding the lease of that land.

Learned President's Counsel appearing for the 3rd respondent submitted that no interim relief could be granted against the 3rd respondent since the 3rd respondent is a private company and his action is not subject to review in an application for a Writ of Mandamus or Certiorari. Learned President's Counsel also submitted that the 3rd respondent was placed in possession of the land in question pursuant to a decision of D. G. Premachandra, Secretary, Ministry of Lands. In this connection, he has produced letter dated 12.5.92 marked 3R3. As regards the interim relief sought against the 1st and the 2nd respondents, learned President's Counsel submitted that this Court has no jurisdiction to grant such interim relief in view of the provisions of section 24 (1) of the Interpretation Ordinance, as amended.

We have considered the submissions of learned Counsel and the contents of the documents that have been filed and produced. We are of the view that the petitioner has established a *prima facie* case that a lease in the nature of what is proposed to be given to the 3rd respondent company will attract the provisions of Regulation 21 (2) of the Regulation referred above. In any event notices P34 to P50 constitute evidence of an administrative practice and there appears to be no basis to make an exception in the case of the 3rd respondent. In the circumstances, it would be obligatory on the 1st respondent to publish a notification specifying *inter alia* the date on which objections may be filed to the proposed lease.

We have also considered the submission of learned President's Counsel for the 3rd respondent with regard to the application of section 24 (1) of the Interpretation Ordinance, as amended. We are of the view that this provision does not remove the inherent power of the Court to make an interim order in the nature of a stay order restraining an administrative authority from proceeding with a particular course of action, pending determination of an application, where the final relief will otherwise be rendered nugatory.

Considering the matters that have been pleaded in the petition, in particular with regard to the environmental impact of the proposed lease of state land adjacent to the Kandalama tank, we are of the view that the 2nd respondent should be restrained, pending the determination of this application from executing a lease of that land without complying with Regulation 21 (2).

As regards the interim relief sought against the 3rd respondent, we have considered the submission of learned President's Counsel that the 3rd respondent is a private company and cannot be directly affected by judicial review exercised in an application of this nature.

The documents marked 3R1 to 3R3 produced by learned President's Counsel do not disclose the legal basis on which D. G. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development directed that the 3rd respondent be placed in possession of the land in question prior to the execution of the proposed lease. Certainly, there is no provision in the Crown Lands Ordinance or the Regulations made there under that empower the Secretary to take administrative action to place any party in possession of state land pending grant of a lease. Such action militates against the provisions of Regulation 21 (2) which requires a notice to be published inviting objections. No useful purpose will be served by such a Regulation if the Secretary could arrogate to himself the power to place a private party in possession of state land pending the completion of statutory procedures.

Learned President's Counsel submitted that a lease may be granted in terms of section 2 of the Crown Lands Ordinance. We are mindful that section 2 grants a complete power to the President to effect, *inter alia* leases of state land. However, the documents marked 3R1 to 3R3 do not disclose that there has been any decision by His Excellency the President to grant a lease in terms of section 2, to the 3rd respondent. Furthermore, we note that according to the prospectus P4 it has been claimed by the 3rd respondent that the lease has been granted by the Ministry of Lands and Mahaweli Development. In the circumstances, we are of the view that the documents produced by learned Counsel do not establish an authority under law for the 3rd respondent to be in possession of state land. However, we are inclined to agree with the submission of learned President's Counsel that the 3rd respondent being a private company could not directly be affected by relief that will finally be granted in an application for judicial review. In the circumstances, we are not inclined to grant interim relief prayed for in prayer (e) of the prayer to the petition. However, it has to be noted that the 3rd respondent, if it continues with any construction work on the land in question, it will do so, at its peril.

We direct the issue of notice on the 1st and the 2nd respondents (who are not before Court today pursuant to notices that have already been sent), stating that they may file objections, if any, on 18.8.92. Mr. Choksy, P.C., takes notice on behalf of the 3rd respondent but reserves his right to file objections after the objections, if any, of the 1st and the 2nd respondents have been filed.

In view of the reasons stated above we grant the petitioner the interim relief prayed for in paragraph (f) of the prayer to the petition on the 1st and the 2nd respondents operative till the final determination of this application. This order will restrain the 1st and 2nd respondents from executing any lease of the state land, in question, without complying with the requirements of regulation 21 (2) referred above.
