

MULTINATIONAL PROPERTY DEVELOPMENT LTD
V.
URBAN DEVELOPMENT AUTHORITY.

COURT OF APPEAL.
RANARAJA J.
C.A. 891/94
MAY 07, 1996.

Urban Development Authority Law 41 of 1978 – Decision to allocate land on 99 year Lease- Payments made-Final draft ready-Change of Policy - Cheques returned – Decision revoked – Legitimate expectation – Rule of Audi Alteram Partem.

'Chalmers Granaries' was vested with the Urban Development Authority (UDA). The U.D.A. approved a project by the Petitioner company to construct a complex car park on the said land and decided to allocate the said land on a 99 year lease. The sums agreed were paid and the final draft was ready.

After the change of Government the UDA decided not to allocate the said land to the Petitioner Company.

The Petitioner complains that the Respondent had arrived at the said decision (a) without affording it an opportunity of being heard (b) decision was arbitrary and mala fide.

Held:

(i) A substantive change to policy resulting from a change in the Executive Presidency cannot be avoided, but where a New Policy is to be applied, the individuals who have legitimate expectations based on promises made by public bodies that they will be granted certain benefits, have a right to be heard before those benefits are taken away from them on the ground that there had been a change of policy.

(2) In the public law field, individuals may not have strictly enforceable rights but they have legitimate expectations. Decisions affecting such legitimate expectations are subject to judicial review.

Per Ranaraja, J.

'It is no excuse to say that even after a hearing the decision will not be

changed in view of the change of Policy, and that there is no purpose served by giving a hearing. This attitude by public bodies funded by the Public to serve the Public should best be avoided.

AN APPLICATION for a writ of Certiorari.

Cases referred to:

1. *R v Secretary of State* for the Home Department ex parte Kahu (1985) 1 All E.R. 40
2. *CCSU v Minister* for Civil Service 1984 3 All E.R. 950 at 954

E.D. Wickramanayake with P.C. Crosette Thambiah, D.W. Thurairajah and Prasanna Jayawardene for the Petitioner.
Romesh de Silva, P.C. with Palitha Kumarasinghe and Hiran de Alwis for Respondent

Cur. adv. vult.

May 07, 1996

DR. RANARAJA, J.

The land on which "Chalmers Granaries" Fort/Pettah, stand, in extent of acres 3 roods 27.2 perches, was vested with the 1st Respondent Urban Development Authority by Special Grant certificate (R1) bearing No. 4/2/8988 dated 20th June 1980. In terms of the Urban Development Authority Law No. 41 of 1978 as amended, the Respondent had on 1.3.83 approved a project by the Petitioner Multinational Property Development Ltd, to construct a shopping complex and car park on the said land. (p1). By letter P5 dated 28.2.94 the Respondent informed the Petitioner that it had decided to allocate the said land on a **99 year lease** for a premium of Rs.142,848,000/- at 90,000/- per perch, subject to the conditions set out therein. The Petitioner accepted the offer of the lease by letter P6 dated 4.3.94, and forwarded cheque No. 858951 dated 11.3.94 for a sum of Rs. 7,200,000/- being 10% of the premium for 5 acres of the said land as requested by P5 The Petitioner also paid a sum of Rs.1,50,000/- as legal fees, and a further sum of Rs. 64,800,000/- being the balance premium (P13) . The Respondent prepared the final draft of the lease agreement (P6) on 14.7.94. It also accepted a sum of Rs. 750/- on 15.7.94 as annual ground Rent. (P17).

By letter P18 dated 28.9.94 the Petitioner requested the Respondent to fix an early date for the execution for the lease agreement. The Respondent by P19 dated 10.10.94 informed the Petitioner that it had **decided not to allocate the said land to the Petitioner.** The Respondent enclosed two cheques for Rs. 72,223,501/- as a refund of the premium, legal fees and stamp fees. By letter P20, dated 15.10.94 the Petitioner protested and refused to accept the Respondent's cheques. The Petitioner also wrote to the Minister in charge of the subject. There was no reply to either letter.

The Petitioner's complaint is that the Respondent had arrived at the decision not to allocate the said land to the Petitioner, (a) without affording it an opportunity of being heard regarding any reason which may have motivated the Respondent's decision,

(b) The decision was arbitrary and mala fide.

The Petitioner therefore seeks an order quashing that decision.

The Respondent has filed objections setting out the reasons for the sudden decision not to allocate the land to the Petitioner inter alia as follows.

- (1) On or about 13.7.94 Mrs. S.W.R.D. Bandaranayake the then leader of the opposition presented to the then President a protest.
- (2) The said protest was carried in the Newspaper.
- (3) The Presidential Secretariat, directed the Respondent to suspend forthwith the alienation of the said land (R6).
- (4) The land has been given at a value much less than the market value.
- (5) No proper scheme was submitted by the Petitioner for the development of that area.
- (6) There had been no valuation.
- (7) There had been no feasibility report submitted.
- (8) There had been no cost benefit analysis.
- (9) There had been no tender at any time in connection with the lease.
- (10) The Petitioner is a "dummy" company.
- (11) The Architectural Drawing in respect of the premises is not yet ready or submitted.

It cannot reasonably be denied by the Respondent that items 4 to 11 above, were matters which were well within the knowledge of the Respondent at the time the decision to allocate the land to the Petitioner was taken and the Draft deed was prepared. If the reasons given for revoking the decision of the Respondent are genuine, it had every opportunity of calling upon the Petitioner to satisfy the Respondent that those matters were properly dealt with.

The Respondent relies on R6 dated **13.7.94** to support the revocation of the decision to lease the said land to the Petitioner. By that letter the Secretary to the Ministry of Housing has directed the Respondent to **suspend** action on signing of the agreement. The Respondent has failed to produce any evidence in support of the averment (Except Newspaper reports) that the then Leader of the Opposition protested to the then President of the proposed lease. Factually, it was the change in policy of the new Executive President which led the Respondent to change its decision.

However, when the Respondent prepared the final draft of the lease agreement for signature, the Petitioner had a "Legitimate Expectation" that the Respondent would conclude the transaction.

"In the public law field, individuals may not have strictly enforceable rights but they may have legitimate expectations. Such expectations may stem either from a promise or representation made by a public body A promise to confer a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. Decisions affecting such legitimate expectations are subject to judicial review. "- **Judicial Remedies in Public Law - Lewis P 97.**

"Where a member of the public affected by a decision of a public authority had a legitimate expectation based on a statement or undertaking by the authority that it would apply certain criteria or follow certain procedures in making its decision, the authority was under a duty to follow those criteria or procedures in reaching the decision provided that the statement or undertaking in question did not conflict with the authority's statutory duty". *R v Secretary of State for the Home Department, ex parte Kahn* ⁽¹⁾.

In the instant application, the Respondent had at no stage indicated to the Petitioner, until it wrote P19, that it had failed to follow the required procedure to obtain the lease of the relevant land. It is in the objections filed by the Respondent that new criteria have been introduced for the granting of the lease. Those conditions were not contemplated even in the final Draft Lease Bond prepared by the Respondent.

The Respondents' decision not to allocate the land to the Petitioner it appears was based on the policy of the new Executive President to review the transactions of the earlier regime in respect of state lands. The Secretary to the then Executive President had informed the Secretary to the Ministry of Housing by a note dated 13.7.94, the change of policy which led the Respondent to suspend its earlier decision to execute the Deed of Lease. A substantive change in policy resulting from a change in the Executive Presidency cannot be avoided. But where a new policy is to be applied, the individuals who have legitimate expectations based on promises made by public bodies that they will be granted certain benefits, have a right to be heard before those benefits are taken away from them on the ground that there had been a change of policy.

The principle which has been entrenched in the branch of administrative law regarding legitimate expectation is that of being allowed time to make representations, especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure. – *CCSU v Minister For Civil Service* ⁽²⁾.

The Petitioner has sought the quashing of the decision of the Respondent communicated by P19 which admittedly was taken without giving the Petitioner a hearing. It is no excuse to say that even after a hearing the decision will not be changed in view of the change of policy, and that there is no purpose served by giving a hearing. This attitude by public bodies funded by the public to serve the public should best be avoided.

Relief is accordingly granted in terms of prayer (b) to the application. The Respondent is directed to give the Petitioner an opportunity

of satisfying the Respondent on any matters stated in the objections which it claims were the reasons for revoking its earlier decision to lease the said land to the Petitioners, and make a determination according to Law.

The application is allowed in terms of prayer (b) without costs.

Application allowed.