THIRIMAVITHANA VS. URBAN DEVELOPMENT AUTHORITY AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
SISIRA DE ABREW, J.
CA 378/2005
NOVEMBER 14, 2005
JANUARY 25, 2006
MAY 8, 10, 15, 16, 17, 23, 25, 26, 29, 2006
JUNE 1, 6, 15, 27, 2006
SEPTEMBER 6, 2006

Writ of Certiorari - Acquisition of Land reserved for play ground/ recreational activities for residents - possession taken over - under unlawful arbitrary capricious? - Urban Development Authority law (UDA) law of 41 of 1978 as amended - Section 18(1). Alienation of UDA land - is the approval of the minister necessary? Availability of Judicial review - failure to follow procedure laid down in law - total? - Legitimate Expectation - to have the ground kept as a play ground? change of promise - overriding public interest?

The petitioners are the owners/residents/ occupiers of the houses situated within the Jayanthipuara Housing Scheme - 65 Acres. The Land was originally divided amongst the original owners and a block of land of about 5 Acres 3 Roods was identified as open space. A portion of this area - in extent one Acre had been used as a playground and for recreational activities by the residents and the school children of the area.

The 1st respondent UDA sought to acquire the said 1 Acre and the adjoining 20 Perch land to be given to a State Department and possession had been handed over to the State Department. The Petitioners sought to quash the said decision on the basis that the said decision is unlawful, arbitrary capricious and offends the principles of unreasonableness, Legitimate Expectation and natural justice.

Held

(1) Section 18 of the UDA Law suggests that the UDA can alienate any land or interest in any land held by the UDA with the approval of the Minister in charge of the subject of Urban Development. It appears that the UDA derives power to alienate any land or interest in any land held by the UDA only with the approval of the Minister. The UDA has alienated a land held by it without obtaining the approval of the Minister.

(2) The UDA took the decision to alienate the land on 8.4.2003 - the Minister had given approval only in October 2004.

(3) The UDA in the circumstances has acted without any legal basis.

Per Sisira de Abrew, J.

> "Acting without power, in my view, is more offensive to the rules of Administrative Law than exceeding power when the principle laid down in the judicial decisions apply to the facts of this case; the decision alienating the Land to the State Department has to be quashed."

(4) The possession was handed over on 18.9.2002. The approval of the Minister was on 25.10.2004. Approval was granted 2 years after handing over of the Physical possession of the land to the State Department. This decision is ultra vires the UDA law.

(5) Section 18 of the UDA law contemplates on instruments of alienation. No such instrument has been produced. Section 18 further states that when lands are alienated the UDA will have to prescribe the terms and conditions as determined by the Minister. This is a safeguard to protect the purpose for which the land was alienated - purpose of Urban Development.

In Sisira De Abrew, J.

> "Even if the petitioners have not come to Court on the basis that the UDA had failed to follow the procedure laid down in law, if it is brought to the notice of Court that the respondents have taken decisions after violating the procedure so laid down and without following the mandatory requirements can the Court exercising supervisory Jurisdiction over the decisions made by the public bodies, turn a blind eye to such decisions - the answer is No."

(6) Legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority upon the

existence of a regular practice which the claimant can reasonably expect to continue. There is a clear promise given by the UDA that the land would be kept as a the play ground for the residents of the scheme - The petitioners also claim that they have been using this land as a play ground since 1964 when the housing scheme was originated. The promise had generated legitimate expectations in the minds of the petitioners to keep this land as a play ground.

(7) Her Excellency the President in a Cabinet Memorandum - 30.01.2001 - stated that a land at Robert Gunawardene Mawatha Battaramulla had been assigned by the UDA for the purpose of constructing a Head Office Complex for the State Department. Then can be an overriding public interest to give the land which is at Jayathipura Battaramulla to the State Department - There is no overriding public Interest to give this Land to the State Department. It is not possible for the UDA to say that they changed their policy as there was an overriding public Interest.

(8) The public authorities are bound by its undertakings/promises provided (1) That they do not conflict with its statutory duty (2) that there is an overriding public interest justifying the departures from the earlier undertakings or promises.

Per Sisira De Abrew, J.

"Hence after the promise or undertaking, if parties enter in to an agreement on the strength of the said promise or undertaking and if such agreement is violated, since in such a situation relationship between the parties is a contractual. No right lies to remedy the grievances arising from alleged breach of contract."

(9) If a public authority decides to act contrary to its published policy or decisions to frustrate Legitimate Expectation created among the individuals by way of promise or undertaking such decisions, unless there is an overriding public interest are liable to be quashed by way of Writ of Certiorari".

APPLICATION for a writ of Certiorari . . .

Cases referred to :-

(1) *R. vs. North and East Devon Health Authority ex parte Coughlen* - 2000 3 All ER 850 at 873

(2) *Preston vs. IRC,* 1985 2 All ER 327 at 337, 1985 AC 835 at 862

(3) *Gunarathne vs. Chandrananda de Silva* 1998 3 SLR 265

(4) *Associated Provincial Picture House Ltd vs. Wednesbury Corporation (1948)* - 1KB 223 at 229

(5) *Bradbury and Others vs. Enfield London Borough Councial*- 1967 1 WLR 1311 at 1324

(6) *Regine vs. Hull University Ex Parte* - (1993) AC 682 at 701

(7) *Boddington vs. British Transport Police* 1999 2 AC 143 at page 171

(8) *Jayantha Wijesekera and Others vs. Attorney General and Others* SC (FR) 243-245/2006

(9) *Council of Civil Services Union vs. Minister for the Civil Service* - (1985) AC 374 at 410

(10) *Tokya Cement Co. Ltd vs. Gunrathne and Others* (SC Appeal No. 23/2004)

(11) *Attorney General of Hong Kong vs. Ng Yuen Shiu* (Privy Council) 1983) 2 AC 629

(12) *Regina vs. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators Association (1972)* -2 QB 299

(13) *Council of Civil Services Union vs. Minister for the Civil Service* (1984) 3 All ER 935

(14) *Wickremaratne vs. Jayaratne and other* 2001 3 SLR 161

(15) *Sirimal and Others vs. Board of Directors of the Co-operative Wholesale Establishment and others* 2003 2 SLR 23

(16) *Regina vs. Secretary of State for Education and Employment, Ex-parte, Begbio* 2000 1 WLR 1115

(17) *R vs. Home Secretary exp Asif Mahmood Khan* (1984) 1 WLR 1337

(18) *Dayarathne and Others vs. Minister of Health and Indigenous Medicine* (SC) (1999) 1 SLR 393 at 412

(19) *Chanfradasa vs. Wijeratne* (1982) 2 SLR 412

(20) *Weligama Multipurpose Co-operative Society vs. Chandradasa Daluwatta* (1984) 1 SLR 195 at 199

(21) *Jayaweera vs. Wijeratne* (1985) 2 SLR 413

(22) *De Alwis vs. Sri Lanka Telecom* (1995) 2 SLR 38

(23) *K. S. De Silva vs. National Water Supply & Drainage Board and Another* (1989) 2 SLR 1

(24) *Jayawardene vs. Peoples Bank* (2002) 3 SLR 17

Sanjeewa Jayawardene with *Rajeev Amarsinghe* for the Petitioner.

Farzana Jameel SSC with *Anusha Samaranayeke SC* for the respondnets.

October 26th 2006
SISIRA DE ABREW J.

The facts

The petitioners are the owners and/or residents and/ or occupiers of the houses situated within the Jayanthipura Housing Scheme which comprises approximately 65 acres (26.31 Hectares) of land bordering the Battaramulla - Pannipitiya Road and Parliament State Drive. There are approximately 2500 residents living in this housing scheme. According to the petitioners when the said land was originally divided amongst the original owners, a block of land extent of which is about 5 Acres and 3 Roods was identified as open space and the said land is depicted as lot 5 in plan marked P3. The petitioners state that a portion of this land amounting to one acre had, since 1954, when the housing scheme was originated, been used as a play ground and for recreational activities by the residents and the school children of Battaramulla.

In May 1995, the petitioners received information that certain interested parties were making attempts to acquire the said land and on making inquires, the 1st respondent by letters marked P9 and P11 informed the petitioners that the 1st respondent had not given any approval to allocate this playground to any outside party for development and that this land has been reserved for Jayanthipura Housing Scheme for the last 40 years. However when the representatives of the petitioners met the Director (Lands) of the 1st respondent on 4.6.2003 they were informed that the land used as playground had been earmarked to be given to a Government Department. The document marked 1R16 indicates that lot No.1 of plan No. 664 dated 18.09.2002 has been given to Director, Department of Wild Life Conservation on 18.9.2002.

The petitioners, inter alia, move for a writ of certiorari to quash the decision of the 1st, 2nd and 3rd respondents and/or 7th to 13th respondents to allocate and/or grant and/or transfer the land depicted as lot No. 5 in plan marked P3. The Petitioners also move for a writ of prohibition on the 1st to 3rd and 5th respondents from using and/or utilizing the said land for any purpose other than as an open space and playground. The 1st, 2nd and 3rd respondents in paragraph 16(n) of their statement of objections admit that physical possession of lot no 1 of plan No. 664 dated 18.9.2002 prepared by AJB Wijekoon Licensed Surveyor amounting to one acre was duly handed over to the Department of Wild Life Conservation (Department of WLC) on 18.9.2002. It is significant to note that the date of the plan in 18.9.2002 and the handing over of the said block of land was also done on the same date. From the pleadings filed by the petitioners and the respondents it is safe to conclude that physical possession of the playground has been handed over to the said department and it is this playground and the adjoining block of 20 perches that the petitioners are complaining of. The petitioners allege, inter alia, that the decision of the 1st to 3rd respondents and 7th to 13th respondents to allocate the above land is unlawful, arbitrary, capricious and offends the principles of unreasonableness, fairness, proportionality, natural justice, legitimate expectation and for improper motives. I will first advert to this contention. Under section 18 of the Urban Development Authority Law (UDA Law) No. 41 of 1978 as amended, the Urban Development Authority (hereinafter referred to as the UDA) has the power to alienate any land held by the UDA. Section 18(1) of the UDA Law provides as follows:-

"The Authority may, with the approval of the Minister, alienate, by way of sale, lease, rent or rent purchase for the purpose of urban development, any land or interest in land

held by the Authority, subject to such terms and conditions including the use or uses for which the land or interest in land is alienated as may be determined by the Minister, and in particular, but without prejudice to the generality of the foregoing provisions of this section, a condition to the effect that the alienation effected by the instrument of alienation may be cancelled or determined in the event of a failure to comply with any other condition specified in such instrument, or in the event of any money due to the Authority under such instrument remaining unpaid for any such period as may be specified therein"

A close reading of Section 18 suggests that the UDA can alienate any land or interest in any land held by the UDA with the approval of the minister in charge of the subject of urban development (hereinafter referred to as the Minister). Considering the scheme provided in Section 18(1) of the UDA Law, it appears to me that the UDA derives power to alienate any land or interest in any land held by the UDA only with the approval of the Minister. Thus, the UDA, before proceeding to alienate a land held by the UDA, must first obtain the approval of the Minister and then proceed with the alienation. According to Section 18(1) of the UDA Law, terms and conditions which should be included in the instrument of alienation must also be determined by the Minister. This shows that the Minister's approval is a necessary requirement prior to the alienation of the land. It is therefore seen that if the UDA has alienated a land held by it without obtaining the approval of the Minister, such decision has been taken without any legal authority.

Decision taken without authority

In the present case, physical possession of the land was handed over to the Department of WLC on 18.9.2002. The UDA took the decision, according to the respondents, to

alienate the land on 8.4.2003 (1R14). The respondents claim that the Minister gave the approval to alienate the land only in October 2004 (1R18). Thus, the decision to alienate the land was taken without the approval of the Minister. It is therefore seen that the UDA, when it decided to alienate the land to the department of WLC, has acted without any legal basis. I have elsewhere in this judgment dealt with this aspect in detail. It is undisputed that the UDA derives power to alienate lands from the UDA Law. Then, can the UDA go against the very same statue which gives it the power to alienate? I think not. "It is axiomatic that a public authority which derives its existence and its powers from statute cannot validly act outside those powers." [Vide Lord Wolf MR in *R. vs North and East Devon Health Authority ex parte Coughlen*[1]. "Judicial review is available where a decision making authority exceeds its power, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached or abuse its powers." Vide Lord Templeman in *Preston. Vs IRC,*[2] at 337, at 862 (House of Lords). This dictum was considered by lord Wold MR in *Coughlen's case (supra).*

Acting without power, in my view, is more offensive to the rules of Administrative Law than exceeding power. When the principles laid down in the above judicial decisions apply to the facts of this case, the decision of the UDA alienating the land to the Department of WLC has to be quashed. The above view is also supported by the judicial decision pronounced in the case of *Gunarathne. vs. Chandrananda de Silva*[3]. In that case the petitioner, a Senior Deputy Inspector General of Police, was set on compulsory leave by the Secretary Defence as the Commission of Inquiry (Batalanda Commission) had made adverse findings against the petitioner. It was contended that the decision to place the petitioner on compulsory leave

is ultra vires and therefore is void in law for the reason that the said decision has not been taken by the proper authority namely by the PSC. Gunawardene J in the above case at page 288 held: "The decision of the respondent (Secretary/ Defence) being vitiated, as it is by a jurisdictional error, that is a decision that had been made in the exercise of a power or jurisdiction which the Secretary Defence clearly did not possess the decision had been legally void from the beginning." In this connection it is relevant to consider a passage from Administrative Law by Wade & Forsyth 8th edition page 36. "Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorization, and if it is not within the powers given by the Act, it has no legal led to stand on. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened. In this way the unlawful act or decision may be replaced by a lawful one." As observed earlier, when the UDA decided to alienate the land it had acted without power. Considering the principles laid down in the above legal literature, I hold that the decision of the UDA alienating the land to the department of WLC is a nullity. At the hearing of this case, learned SSC, at one stage, admitted that the UDA cannot alienate lands without the approval of the Minister. She conceded that the Minister's approval is a necessary requirement for the UDA to alienate lands. But she contended that the UDA could take decisions to alienate lands without the Minister's approval and seek Minister's approval later. She even contended that the physical possession of the land could be handed over to the prospective buyer and the buyer could commence development activities on the land such as constructing buildings without the said approval of the Minister. Here, I ask the question: What

happens, after taking the said steps, if the Minister refuses to grant approval? Then, can the UDA be heard to say that, since the prospective buyer has developed the land, leave aside the Minister's approval, alienation of the land must be proceeded with? If this is permitted, then the purpose of Section 18 will be rendered nugatory and the Minister will be just a figure head who becomes unable to use his discretion in the decision making process. The legislature, in enacting this law, did not, in my view, permit the existence of this kind of absurd situation. One should not forget that according to Section 18 of the UDA Law, terms and conditions in the instrument of alienation should be determined by the Minister. May be for the sake of convenience the UDA stipulates terms and conditions and seeks the Minister's approval but the final decision with regard to the terms and conditions is left with the Minister. Although the learned SSC contended that the Minister, by letter marked 1R18, had granted approval to allocate the land to the department of WLC on 25.10.2004, the Coordinating Secretary of the Ministry of Urban Development & Water Supply, on 17.2.2005, admitted by letter marked 1CA9 that the Minister had not granted such approval. This is a letter written by the said Secretary to the Director General UDA. This letter was produced to Court along with the counter objections. The relevant paragraph of this letter is reproduced below. "In the absence of either Ministerial or Cabinet approval Hon. Minister has directed me to inform you to shift the site from the present site to the area with Pannipitiya road frontage as agreed upon by JSS and to release the block of land required by JSS." The Minister being the 5th respondent did not even file an affidavit stating that he granted approval under section 18 of the UDA law. For the above reasons, I am unable to agree with the contention of the learned SSC.

Failure to follow the procedure laid down in law

When the 1st to 3rd respondents decided **to hand over the physical possession** of the land as averred by paragraph 16(n) of their statement of objections, did they have the relevant approval? According to 1R16 filed by the 1st to 3rd respondents, physical possession of the land had been given to the Department of WLC on 18.09.2002. The 1st and the 3rd respondents claim that the approval of the Minister was obtained on 25.10.2004. (Vide 1R18). Thus, this approval was granted two years after the handing over of the physical possession of the land to the Department of WLC. Respondents claim that the UDA took the decision to alienate the land on 8.4.2003. Then it is clear that the UDA has failed to obtain the Minister's approval before taking the decision to alienate the land to the Department of WLC and before taking the decision to hand over the physical possession of the land. Therefore the decisions of the UDA to hand over the physical possession of the land to the department of WLC and to alienate the said land are ultra vires the UDA law as the UDA has taken the decisions without following the procedure laid down in Section 18(1) of the UDA law.

Under Section 18 of the UDA Law, the UDA has the power to alienate lands held by the UDA by way of sale, lease, rent, or rent purchase. The modes of alienation are already spelt in the said section. So when the UDA handed over the physical possession of one acre land on 18.9.2002 to the Department of WLC did alienation take place by way of sale, lease, rent or rent purchase? Section 18 of the said Law contemplates an instrument of alienation. Is there an instrument of alienation in this case? The respondents have failed to produce any instrument of alienation. Therefore handing over of the physical possession of the said land (one acre) was contrary to Section 18(1) of the said Law. According to the

said Section when lands are alienated, the UDA will have to prescribe the terms and conditions as determined by the Minister. Further, this Section provides that there should be a condition in the instrument of alienation to the effect that the alienation to be cancelled in the event of a failure to comply with any of the conditions specified in such instrument. This condition too must be determined by the Minister. The idea of this condition, in my view, is to ensure adherence of the terms and conditions specified in the instrument by the person in whose favour the instrument is effected. This, in my view, is a safeguard to protect the purpose for which the land was alienated. One should not forget the fact that the alienation of the land under Section 18(1) is effected for the purpose of urban development. Thus the intention of the legislature, in Section 18, is to ensure that the land is utilized for the purpose of urban development. This is one of the reasons why Section 18 of the UDA Law expects the terms and conditions to be specified in the instrument of alienation. No instrument of alienation setting out the terms and conditions is produced in this case. Considering the above observations, I am of the opinion that the Minister's approval and the determination of terms and conditions in the instrument of alienation by the Minister are mandatory requirements in Section 18(1) of the UDA Law. As I pointed out earlier, the UDA has failed to follow the mandatory requirements set out in law and therefore the decision of the UDA to alienate the land is a nullity. Considering all these matters it is clear that the UDA has taken a decision to alienate the land without following the procedure laid down in Section 18(1) of UDA Law. Learned SSC contended that this was not the basis on which the petitioners came to Court. That is to say the UDA had failed to follow the procedure laid down in the Law. Learned SSC however argued that the petitioners are not entitled to claim the reliefs prayed for. When considering this contention one

should not forget paragraph 64 of the petition. The petitioners, in paragraph 64 of the petition, claim that the decision of the 1st to 3rd respondents is unlawful, arbitrary and offends the principles of reasonableness and fairness. In this regard I cannot resist quoting an excerpt from an eloquent pronouncement of Lord Greene MR in the case of *Associated Provincial Picture House Ltd. vs Wednesbury Corporation*[4]. To quote: "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably."

In the present case has the UDA, entrusted with the discretion of alienating lands under section 18 of the UDA Law, directed itself properly in law? Has it called its attention to the matters which it is bound to consider? The answer is clearly no. For the above reasons, I am unable to agree with the contention of the learned SSC.

Even if the petitioners have not come to court on the basis that the UDA had failed to follow the procedure laid down in law, if it is brought to the notice of court that the respondents have taken decisions after violating the procedure so laid down and without following the mandatory requirements, can the court, exercising supervisory jurisdiction over the decisions made by the Public Bodies, turn a

blind eye to such decisions? The answer is no. "If a local authority does not fulfill the requirements of law, this court will see that it does fulfill them." [Vide Lord Dening MR in the case of *Bradbury and Others vs. Enfield London Borough Council*[5] at 1324. What happens when the procedure laid down in law is not followed by Public Bodies? What is the duty of court when such violations are brought to the notice of Court? In this connection, I would like to cite the following passage from the judgment of Danckwerts LJ reported in *Bradbury's case (supra)* at 1325. "It is imperative that the procedure laid down in the relevant statute should be properly observed. The provisions of the statute in this respect are supposed to provide safeguards for Her Majesty's subjects. Public Bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place." Lord Denning MR in the above case observed thus: "If a local authority does not fulfill the requirements of the law, this court will see that it does fulfill them. It will not listen readily to suggestions of 'chaos.' The department of Education and other local education authority are subject to the rule of law and must comply with it, just like everyone else." Bradbury's case (supra) was a case where petitioners, by their writ, claimed, inter alia, for a declaration that the defendants' resolutions carrying out of the proposed reorganization of secondary education in the borough were ultra vires and of no effect. It response to circular issued by the government, many of the local education authorities began to reorganize their system of secondary education. One of them was the council for London Borough of Enfield. Chief Education Officer submitted proposals to the relevant Department. A week later Department replied indicating that revised proposals were acceptable but giving a reminder to the Council that, under the statute, public notice had to be given before the proposals could be officially approved. The Council

issued public notices in regard to a number of schools. Thereafter several persons objected and submitted their objections to the Minister. He considered the objections. He gave his official approval to the proposals for those schools. But in respect of eight of the schools, no public notice was given and as such members of the public were not given an opportunity to voice their objections. Under the law of England when the Council intends "to establish a new school" or to "cease to maintain" an existing school, Council was under a duty to submit their proposals to the Minister and forthwith give public notice of the proposals in the prescribed manner. Thereupon any ten local government electors could, within three months, submit objections to the Minister. Under the law the Minister, after considering the objections may approve the proposals. A local education authority cannot do anything to implement their proposals until they have been approved by the Minister. After considering the proposals of the council, Court took the view that in regard to the eight schools, the intention of the education authority was to "cease to maintain" them (schools) and "to establish new" schools within Section 13 of the Act. Lord Denning MR delivering the judgment remarked as follows: (page 1323) "They ought, therefore, to have given public notices of their proposals, so that the people could object. On objection being lodged, the Minister would have to consider them. Not till then could the Minster give his approval. . . . It is implicit in Sections 13(3) and (4) that the Minister cannot approve unless he has considered all objections submitted to him. . . . . I hold that, therefore, the council has not fulfilled the statutory requirements of Sections 13(3) and (4) in regard to the eight schools. They must continue to maintain them (schools) and must not cease to maintain them until the statutory requirements are fulfilled."

As I pointed out earlier, in the present case, the decisions of the UDA to hand over the physical possession of the play ground and to alienate the play ground are without authority. The UDA has taken the said decisions without following the procedure laid down in Section 18 of the UDA law. When I apply the principles laid down in Bradbury's case (supra), I have to make an order quashing the said decisions of the UDA.

In *Regina vs. Hull University Ex parte*[6] at 701 (House Lords) Lord Brown Wlikinson observed thus: "The fundamental principle (of judicial review) is that courts will intervene to ensure that the powers of public decision –making bodies are exercised lawfully. In all cases. . . this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with the fair procedures and, in a Wednesbury sense *(Associated Provincial Picture House Ltd. vs. Wednesbury Corporation (supra)*, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is *Wednesbury* unreasonable, he is acting ultra vires his powers and therefore unlawfully. . . ." The above dictum of Lord BrownWilkinson was followed by Lord Steyn in the case of *Boddington. Vs. British Transport Police (House of Lords)*[7] at 171.

In *Jayantha Wijesekera and Others vs. Attorney General and Others SC* [8] the question in relation to the validity of Proclamation effecting a merger of Northern and Easterns Provinces was considered by a bench of five Judges of the Supreme Court. The Supreme Court observed thus: Whilst Section 37(1)(a) of the Provincial Councils Act No. 42

of 1987 empowers His Excellency the President to make a Proclamation declaring two or three Provinces would form one administrative unit, sub paragraph (b) of Section 37 (1) of the said Act contains an exception in respect of the Northern and Eastern Provinces where special conditions have to be satisfied as to the surrender of weapons and cessation of hostilities before an order of merger is made. Those conditions are:

(a) that arms, ammunition, weapons, explosives and other military equipment which on 29.7.1987 were held or under the control of terrorist militants or other groups having as their objectives the establishment of separate State, have been surrendered to the Government of Sri Lanka or to authorities designated by it, and;

(b) that there has been a cessation of hostilities and other acts of violence by such groups in the said Province.

Terrorist militants continued to do acts of violence in the said Provinces even after enactment of the said Provincial Councils Act. Therefore two conditions for the merger as stated in Section 37(1)(b) of the Provincial Councils Act No. 42 of 1987 as to the weapons being surrendered by terrorist militants and a cessation of hostilities had not been met when the President made the impugned order of merger. His Lordship Chief Justice S.N. Silva held as follows:

"The next question to be decided is in relation to the validity of order P2 effecting a merger of the Northern and Eastern Provinces. Section 37(1)(b) contains two mandatory conditions that have to be satisfied before a Proclamation effecting a merger is issued. The address made by the President to the Parliament and the statements as to the security situation seeking an approval of the Proclamations

of the state of Emergency in the year 1988 referred to in the preceding analysis clearly establish that the President could not have been possibly satisfied as to either of these mandatory conditions. . . . . The Proclamation P2 made by the then President declaring that the Northern and Eastern Provinces shall form one administrative unit has been made when neither of the conditions specified in Section 37(1)(b) of the Provincial Councils Act No. 42 of 1987 as to the surrender of weapons and the cessation of hostilities, were satisfied. Therefore the order must necessarily be declared invalid since it infringes the limits which Parliament itself had ordained."

In view of the foregoing analysis, I hold the view that if an order has been made by an administrative tribunal without following the procedure laid down in law or if an order, made by an administrative tribunal, infringes the limits ordained by the Parliament such an order can be declared invalid by Court exercising the writ jurisdiction.

In the instant case, at the time the land was alienated to the Department of WLC, the UDA had not obtained the Minister's approval. As was pointed out earlier, the Minister granted the purported approval two years after the handing over of the physical possession of the land. Under section 18 of the UDA law, UDA derives power to alienate the lands only when the Minister grants the approval. Therefore when the principle laid down in the *Hull University case (supra)* is applied to the facts of this case, the UDA has exercised its powers outside the jurisdiction conferred in alienating the land, and the procedure adopted by the UDA is irregular. Thus, I hold that the UDA has acted ultra vires its powers and therefore the said decision of the UDA is unlawful. Thus, the decision of the UDA to alienate the land must be quashed on this ground alone. When the above judicial decision is

considered in relation to the facts of this case, can there be an argument that the petitioner is not entitled to seek judicial review in this case? I say no.

What happens when a Public Body does not fulfill the requirements of law when taking decisions?

Lord Diplock, in *Council of Civil Services Union. Vs Minister for the Civil Service*[9] at 410 observed thus: "By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable."

In the present case, the UDA did not obtain the approval of the Minister prior to the two decisions dated 18.9.2002 and 8.4.2003. Further when the land was handed over to the Department of WLC on 18.9.2002, there was no decision by the UDA to hand over the physical possession of the land. Thus handing over of the physical possession of the land is contrary to section 18 of the UDA law. There is no instrument of alienation. Terms and conditions which should be included in the instrument of alienation have not been determined by the Minister. These are some of the requirements stipulated in section 18 of the UDA law. I pause here to ask the question: Has the decision maker namely the UDA understood the law (section 18 of the UDA law) correctly? I think not. Then, when the above dictum of Lord Diplock is applied to the facts of this case, the decisions of the UDA alienating and handing over of the physical possession of the land will have to be quashed.

I pause to state here if a public body does not fulfill the requirements of law when taking decisions affecting the rights of the individual, the Court, exercising writ jurisdiction, when it is brought to its notice, must see that such Public Body does fulfill them.

Both Counsel at the hearing of this case agreed that the subject matter of this case is the play ground (one acre land) and the adjoining block of land amounting to 20 perches in extent. With regard to 20 perches block, adjoining the play ground, there is no decision by the board of management of the UDA to alienate this land to the Department of WLC. Therefore the decision of the 1st to 3rd respondents and or 7th to 13th respondents alienating this land (20 perches land) too should be quashed.

Legitimate expectation

I would now like to deal with the question whether the petitioners had a legitimate expectation to keep the said land as a playground. In this context it is relevant to consider P9 and P11. P9 is a letter written by Director General UDA to the Coordinating Secretary to the Ministry of Housing and Construction with copy to the Secretary Jayanthipura Housing Scheme. The Director General, by P9, on 14th November 1995, admitted that the said land had been reserved for Jayanthipura Housing Scheme for the last 40 years. According to P9, this land had been recommended to continue as a playground for Jayanthipura Housing Scheme. The Director General UDA, by P11, on 29.11.1999, again reiterated the above stand of the UDA namely that the land had been recommended to continue as a playground for Jayanthipura Housing Scheme. The Director General, by the said letter, categorically informed the President of the said housing scheme that the UDA had not given any approval to allocate

the said playground to any outsider for development. These two letters (P9 and P11) were issued in response to two letters written by the petitioners.

Learned SSC contended that P9 and P11 were not within the vires of the UDA since they were issued without any legal authority. She, therefore, contended that these two letters cannot generate legitimate expectation in the petitioners. She relied on the judgment of the Supreme Court delivered on 16.11.2005 in *Tokyo Cement Co. Ltd. Vs. Gunarathne and others*[10]. In Tokyo Cement Co. case, the petitioner claimed that the vessel was purchased by the petitioner in view of certain representations made by the Department of Customs in a gazette notification made under Section 47 of the Customs Ordinance specifying the form of the bill of entry and the guide issued, with regard to the clearance of good. The petitioner wrote a letter to the Director General of Customs notifying of the purchase of the vessel and seeking confirmation that 23.5% of the FOB value be taken as the component of freight. The Deputy Director made an endorsement on the letter stating "freight charge of 23.5% approved." This matter was confirmed by the same officer by letter dated 24.5.2001. However when the goods were imported the valuation department of the customs refused to accept the said freight charge of 23.5% and sought to impose the duties on the basis of CIF value that had been declared by the petitioner previously. The decision of the customs was challenged on the following grounds. They are:

(1) that the impugned decision was contrary to the contents of the 'cusdec' form and access guide and as such is ultra vires;

(2) that the impugned decision cannot be made in law in view of the previous representation made by the Department

of Customs giving rise to the principle of estoppel and denial of legitimate expectation of the petitioner.

In terms of Section 51 of the Customs Ordinance when ad valorem duties are imposed, the importer is required to state the value of such articles in the entry together with the description and quantity of the same. It is further provided that "the value shall be determined in accordance with the provisions of the schedule E and duties shall be paid on a value so determined." His Lordship Chief Justice S. N. Silva held as follows: "In the case at hand the Deputy Director has in the communication P6 and P17 purported to fix the freight charge at 23.5% of the FOB price. Such a course of action is clearly not permitted by the provisions of the Ordinance referred to above in relation to the imposition of ad valorem duties. The whole purpose of making a valuation in terms of Section 57 and schedule 'E' of the Customs Ordinance would be brought to nought if such a course of action is permitted to stand. The representation is ultra vires and would not be binding."

It is then seen in the above case that the representation made by the Deputy Director is ultra vires. In the present case, what is the material to suggest that P9 and P11 are contrary to the provisions of the UDA Law? Learned SSC, whilst inviting the attention of court to Section 8 of the UDA Law, tried to argue that P9 and P11 are contrary to the said section. I have carefully examined Section 8 of the UDA Law and I am of the opinion that P8 and P11 are not contrary to the said section. Even the respondents, in their objections, do not state that P9 and P11 are contrary to the UDA Law. There is no such material even in the letter (P26) sent subsequent to P9 and P11, although the writer of P26 has mentioned about P9 and P11. P26 is a letter written on

25.10.2004 by Director Lands on behalf of the Chairman of the UDA. Even in this letter, the said Director Lands does not say that P9 and P11 were issued without authority. A copy of P11 had even been sent to the Secretary to the President. Thus is it the position of the respondents that decision taken without authority has been communicated to Her Excellency the President? It there any material to suggest that the Board of Management of the UDA subsequently resolved that P9 and P11 had been issued without authority? Has the UDA up to date withdrawn P9 and P11? The above two questions will have to be answered in the negative. In view of these observations court is unable to hold that P9 and P11 are not within the authority of UDA. Therefore the principles laid down in the above judicial decision (Tokyo Cement Company case) have no application here. Hence the contention of the learned Senior State Counsel which is not based on the facts of this case will have to be rejected. To my mind there is a clear promise given by the UDA in P9 and P11 that the land would be kept as a playground for the residents of Jayathipura Housing Scheme. The petitioners claim that they have been using this land as a playground since 1964 when the housing scheme was originated. The petitioners have taken up the position that even the school children of Battaramulla have been using this land as a playground. This position of the petitioners is strengthened by letter P9 wherein Director General of the UDA has stated thus: "The above land is an informal playground used by the occupants by the Jayanthiputa Housing Scheme (about 300 houses) and the school children of the surrounding." In view of these facts, the question whether the petitioner had a legitimate expectation to keep or use this land as a play ground must be considered. I now turn my attention to this question. With regard to P9 and P11 learned SSC, referring to 1R4, submitted that 1st respondent became the owner of

the land only in 19.3.1989 and as such the Director General of the UDA could not have said that this land (playground) has been reserved for Jayanthipura Housing Scheme for the last 40 years. She contended that by 14th November 1995 which is the date of P9, the UDA was holding the ownership of the land only for six years and as such 40 years period mentioned in P9 was factually incorrect. She contended that the Board of Management of the UDA had not granted approval to write P9 and P11. On the strength of these facts she contended that both P9 and P11 are factually incorrect and that court should not consider these documents. I now advert to these contentions. It is true that when P9 was issued the UDA was not holding the ownership of the land for 40 years. But it must be noted that according to P9 it is not the UDA which had reserved the land for the last 40 years. What P9 says is that the land has been reserved for Jayanthipura Housing Scheme for the last 40 years. The UDA, by P9, too admits the above reservation. The fact that this land had been recommended **to continue** as a playground by the UDA remains unchallenged. Although P9 speaks about 40 year period, P11 dose not state so. P9 and P11 have also been produced by the 1st, 2nd and 3rd respondents along with their statement of objections as 1R2b and 1R2c. But strangely, 1st to 3rd respondents in their statement of objections do not state that P9 and P11 were issued without the approval of the Board of Management of the UDA. Even in the letter dated 25.10.2004 (P26) written by the Director Land Development and Management of the UDA, he had failed to mention the alleged failure on the part of the Board of Management of the UDA to grant the said approval although he had admitted having sent P9 and P11. The UDA has, so far, not withdrawn P9 and P11. The 1st respondent (UDA), by P9 (dated 4.11.1995) and P11 (dated 29.11.1999), admitted that it had recommended to continue this land as a playground for

Jayanthipura Housing Scheme. Then it would appear that this admission has been made by the 1st respondent after it became the owner of the land. Thus, it can be argued that this is one of the grounds on which the petitioners are entitled to form a legitimate expectation to keep this land as a playground. Learned SSC sought to sterngthen her contention, that is to say that P9 and P11 are not within the vires of the UDA by raising the following question. Can the petitioners expect to enjoy privilege of open space from others land? According to regulation 22 (1) of the UDA regulation (P5), 10% of the land must be kept for recreational purpose. Regulation 22(1) provides:

"Where the parcel of land or site to be subdivided exceeds 1.0 hectare, an area of not less than ten per centum or the land or site, excluding streets shall be reserved for community and recreation used in appropriate locations."

Learned SSC contended that according to the said regulation, 10% of the land must be reserved at the time of the subdivision of the land. She further contended that the said percentage must be reserved from the land to be subdivided and not from the nearby land or adjoining land. With regard to this contention I have to make the following observation. Regulation No. 22, in Gazette P5, was promulgated on 10.3.1986 whereas the subdivision of the petitioner' land, according to plan P2A, took place in 1962. Thus regulation 22 has no application here. Despite the existence of such a situation, the Director General of UDA issued P9 and P11. This shows that the UDA wholeheartedly recommended the continuation of this land as a playground. The UDA, by P9, admits and has recognized the necessity to keep open space within the residential areas. Why did the UDA, by P9, recommend that this land be continued as a play ground?

The word 'continue' must be emphasized. To continue with something, it must already be in existence. Therefore it is clear that this land had been used as a playground even prior to the issue of P9. According to P11 it was the decision of the UDA to continue this land as a playground and not a decision of the Director General. Minutes of the board meetings of the UDA are kept with the UDA. The petitioners have no access to these minutes. If there is no such decision by the UDA, then, the minutes of the board meeting prior to the issue of P11 would indicate the there was no such decision. As I pointed out earlier, the 1st and 3rd respondents, in their statement of objections, had not taken up the position that P9 and P11 were issued without the approval of the UDA. Even in letter dated 25.10.2004 (P 26) the respondents have not taken up this position. For the above reasons, I am unable to agree with the contention of the learned SSC.

On the question of legitimate expectation, I would like to consider following judicial decisions. "Where a student from Nigeria was given oral assurances that she would have no difficulty in returning after going home for Christmas, yet was refused leave to enter on returning, the refusal was quashed by the Court of Appeal on the ground of legitimate expectation and unfairness." Vide Administrative Law by Wade and Forsyth 8th edition page 371.

The Privy Council, in holding that the Government of Hong Kong must honour its published undertaking to treat each deportation case on its merits, has applied the principle that a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty. Vide *Attorney General of Hong Kong vs. Ng Yuen Shiu (Privy Council)*[11]

In *Regina Vs. Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators' Association*[12], Liverpool Corporation had the duty of licensing the number of taxies which they thought fit, and for some years the number had been fixed at 300. In 1971 a sub committee of the council recommended increases in the number of licensed taxies for 1972 and again in 1973, and no limitation on the numbers thereafter. The chairman of the relevant committee gave a public undertaking on August 4, 1971, that the number would not be increased beyond 300 until a private bill had been passed by Parliament and had come into effect, and his undertaking was confirmed by him orally and by the town clerk in a letter to two associations representing the holders of existing taxi licences. In November 1971 the sub committee resolved that the number of licences should be increased in 1972, before the private bill had been passed, and the resolution was approved by the full committee and by the council in December. The association of licence holders applied to court for an order of prohibition and certiorari. The Divisional Court refused the application, but the Court of Appeal granted an order of prohibition against the corporation from granting any increased number of licences without first hearing any representations which might be made by or on behalf of persons interested therein, including the appellant association. Lord Denning MR said at page 308: "the corporation was not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty. . . . . The public interest may be better served by honouring their undertaking than by breaking it."

"Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue" Vide Lord Fraser in

Council of Civil Service Unions and Others. Vs. Minister for the Civil Service [13] (House of Lords) at 944. It is pertinent to consider the case of *R v. North and East Devon Health Authority, ex parte Coughlen*[14]. The facts of this case in brief are as follows: Miss Coughlen met with an accident in 1971. From the date of her tragic accident in 1971 until 1993 Miss Coughlen lived in and received nursing care in Newcourt Hospital for the chronically sick and disabled. It was a large old house with communal wards. It was considered unacceptable for modern care. A decision was taken to discharge the resident 'to a setting which would be more clinically and socially appropriate.' On 15th March 1993 Miss Coughlen moved to Mardon House along with other patients and the Majority of the staff from Newcourt. Marden House was designed to house young, long-term severely disabled, residential patients. The residents of Newcourt had been involved in discussions about the nature and design of the buildings and its services. Newcourt patients were persuaded to move to Mardon House by representations on behalf of the health authority that it was more appropriate to their needs. The patients relied on an express assurance or promise that they could live there 'for as long as they chose.' Nursing care was to be provided for them in Mardon House. It was the new Newcourt.

Mardon House was let by the Exeter and District Community Health Service NHS Trust to a charity, the John Grooms Association, and it was registered as nursing home. John Grooms withdrew in June 1994, as they felt that the evolving service was so heavily weighted in favour of acute clinical work that the unit would be unregistrable under the terms of Registered Homes Act 1984. It ceased to be a registered nursing home and became the responsibility of the NHS trust. It reverted to being solely a NHS facility. No

new long-term patients were admitted from mid-1994. On 7th October 1998 the decision was taken by the health authority to withdraw services from Mardon House and to close the facility. Miss Caughlen challenged the decision of the health authority by way of judicial review. Issues, inter alia, before the court were whether the assurance given on behalf of the health authority to Miss Coughlen and other patients that they can live in Mardon House for as long as they choose constituted a legitimate expectation, and whether the frustration of the legitimate expectation amounts to an abuse of power. Lord Woolf MR at page 883 held: "We have no hesitation in concluding that the decision to move Miss Coughlen against her will and in breach of the health authority's own promise was in the circumstances unfair. It was unfair because it frustrated her legitimate expectation of having a home for life in Marden House. There was no overriding public interest which justified it." Lord Woolf MR at page 889 further remarked thus: "The decision to close Marden House was, however, unlawful on the ground that .... the decision was an unjustified breach of a clear promise given by the health authority's predecessor to Miss Coughlen that she should have a home for life at Marden House. This constituted an unfairness amounting to an abuse of power by the health authority.

In the case of *Wickremratne vs. Jayaratne and Others*[15], "lease of corpus was originally granted to the Petitioner's father. After his death the Provincial Land Commissioner recommended that a portion of the corpus be leased to the Petitioner. The Petitioner agreed to this. The District Secretary requested the Petitioner to handover possession of the entire land whilst retaining the area agreed to be retained by him. However, thereafter the District Secretary decided to take possession of the entire land on behalf of the State, without

affording an opportunity to the Petitioner to make representations. It was contended inter alia that the Petitioner had a legitimate expectation that he would be given a lease of the land (portion)." Gunawardana J held thus: "It is the fact that the legitimate expectation had arisen against the State itself (on the basis the State must be held to have acted through its officers, who are agents of the State) that makes it (expectation) enforceable against the State. If it had been otherwise, that is if the legitimate expectation had not arisen directly as against State itself - then the State could still have proceeded to acquire the land - undeterred by the fact that the legitimate expectation had arisen as against the officers only - because it is the State that is seeking to acquire the lands, but the State is bound, because the officials had in giving assurances, acted as agents of the State and not in their private capacity. The State itself has to honour and cannot renege on the promise held out by its servants to the petitioner."

In the case of *Sirimal and Other vs. Board of Directors of the Co-operative Wholesale Establishment and Others*[16], "the petitioners complained that the 1st respondent ("The CWE") did in violation of their rights under Article 12(1) of the Constitution stopped extension of their services beyond 55 years and purported to retire them from 31.7.2002, by circular dated 21.6.2002(P6). The previous circular dated 14.11.1995 (P5) provided for granting of annual extension from 55 until 60 as in the case of the public sector under Chapter V section 5 of the Establishments Code. The reasons given for the new policy decision were:

(a) Redundant labour force

(b) Heavy losses; and

(c) Reorganization of the CWE to make it a profit making organization

The applications of all petitioners except Nos. 19 and 20 were recommended by the Service Extension Committee; and no application was sent to the Ministry for decision. The previous practice was to grant annual extension up to 60 years except where medical or disciplinary grounds existed."

Weerasuriya J (S. N. Silva CJ and Ismail J agreeing) held as follows:

1. The optional age of retirement in the CWE had been 55 years of age with a right to seek extension up to 60 years of age as in the public sector. The impugned circular seeks to make retirement compulsory at 55 years. The petitioner had a legitimate expectation of receiving extension up to 60 years except where medical or disciplinary grounds were present.

2. Where it is sought to change conditions of service denying the right of extension, the employees should be given a reasonable time and an opportunity of showing cause against change. The court may decide whether the change of conditions of service on policy was lawful. Where the decision is perverse or irrational, the court will intervene.

Applying the principles laid down in above judicial decisions, I hold the view that P9 and P11 had generated a legitimate expectation in the minds of the petitioners to keep this land as a playground.

Change of earlier promises given by Public Bodies when there is an overriding public interest

Having created legitimate expectation amongst the residents/occupiers/ owners of Jayanthipura Housing Scheme is it fair for the UDA to alienate the said land to

the Department of WLC? Learned SSC contended that it became necessary for the UDA to take this decision in order to house the Department of WLC. Can the UDA change its earlier promises or undertaking on the basis that the public interest requires to do so? On this question I would like to consider the following passage from Administrative Law by Wade and Forsyth 8th Edition page 372 "Although there are now decisions of high authority to show that voluntary statements of policy may sometimes be treated almost as binding restrictions in Law, it is obvious, on the other hand, that public authorities must be at liberty to change their policies as the public interest may require from time to time." It is therefore seen from the above passage that public bodies can change their policies depending on whether there is a public interest to do so. When government, especially in a developing country, undertakes development activities, public bodies should be at liberty to change their earlier decisions. But what in necessary to consider, in this case, is whether there was such an overriding public interest when the UDA decided to alienate the said land to the Department of WLC. In this connection, Cabinet memorandum (P16) dated 8.2.2001, signed by the Minister of Urban Development, Construction and Public Utilities, is important. The Minister in P16 stated that the Government had decided to construct a new secretariat with all facilities in Battaramulla in order to bring all government departments and agencies functioning outside the Sri Jayawardenepura administrative area into one building and the Department of WLC could be provided with necessary office space within the said premises. The Minister has made the following statement in the said Cabinet memorandum (P16). "Under these circumstances, allocation of a land to the Wild Life Department as suggested does not arise." In view of the said statement by the Minister

can the UDA say that there was on overriding public interest to give this land to the department of WLC? The respondents have not produced any document to contradict the said position of the Minister. Her Excellency the President. in a cabinet memorandum, dated 30.1.2001 (P16) stated that a land at Robert Gunawardene Mawatha, Battaramulla had been assigned by the UDA for the purpose of constructing a Head Office Complex for the Department of WLC. Then, how can there be an overriding public interest to give this land which is at Jayanthipura Battaramulla to the Department of WLC? For these reasons I am of the view that there is no overriding public interest to give this land to the Department of WLC. In these circumstances it is not possible for the UDA to say that they changed their policy as there was an overriding public interest to give this land to the Department of WLC. For the above reasons, I am unable to agree with the contention of the learned SSC.

Protection of legitimate expectation

I have earlier pointed out that the petitioners had a legitimate expectation to use this land as a playground. Can the decision of the UDA to alienate the said land to the Department of WLC be quashed on the basis that the petitioners had a legitimate expectation? I now turn to this question. "Inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly or contrary to citizen's legitimate expectation." Vide Administrative law by Wade and Forsyth 8th edition page 370.

In the case of *Attorney General of Hong Kong vs. Ng Yuen Shiu (supra)* the Government of Hong Kong announced that certain illegal immigrants, who were liable to deportation, would be interviewed individually and treated on their

merits in each case. The Privy Council quashed a deportation order where the immigrants had only been allowed to answer questions without being able to put his own case, holding that 'when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty. Lord Denning MR in Liverpool Taxi Fleet Operators' Association's case (supra) expressed the view that Liverpool Corporation was not at liberty to disregard their undertaking and the corporation was bound by it so long as it was not in conflict with its statutory duty.

In *Regina vs. Secretary of State for Education and Employment, Ex-parte, Begbie*[18] Court of Appeal of England held that Court would not give effect to a legitimate expectation if it would require a public authority to act contrary to the terms of a statute.

In *R vs. Home Secretary exp Asif Mahmood Khan*[19], Court of Appeal of England quashed the refusal of Home Office to allow a Pakistani, settled in England, to bring in his young nephew with a view to his adoption, since the Home Officer had issued a circular specifying the conditions which need to be satisfied but had, by 'grossly unfair administration', refused admission on altogether different ground. If the published policy was to be changed, the applicant should be given full and serious consideration whether there is some overriding public interest justifying the new departure.

In the case of *Dayarathne and others v. Minister of Health and indigenous Medicine*[20] at 412 His Lordship Justice Amerasinghe held: "When a change of policy is likely to frustrate the legitimate expectations of individuals, they must

be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive. They focus on formal justice and the rule of law, in the sense that rule of natural justice help to ensure objectivity and impartiality, and facilitate the treating of like cases alike. Procedural rights are also seen as protecting human dignity by ensuring that the individual is told why he is being treated unfavourably, and by enabling him to take part in that decision."

Considering the above judicial decisions, I hold that the public authorities are bound by its undertakings/promises provided (1) that they do not conflict with its statutory duty (2) that there is an overriding public interest justifying the departure from the earlier undertakings or promises. However after the promise or undertaking, if parties enter into an agreement on the strength of the said promise or undertaking and if such agreement is violated, then no writ will lie to remedy the grievances arising from such violation since in such a situation relationship between parties is contractual. When the relationship between parties is a contractual one, no writ will lie to remedy the grievances arising from an alleged breach of contract. See *Chandradasa vs. Wijeratne*[21] *Weligama Multipurpose Co-operative Society vs. Chandradasa Daluwatta*[22] *Jayaweera vs. Wijeratne*[23] *De Alwis vs. Sri Lanka Telecom*[24] *K. S. De Silva vs. National Water Supply & Drainage Board and Another*[25], *Jayawaredene vs. Peoples Bank*[26]. I further hold that if a public authority decides to act contrary to its published policy or decides to frustrate legitimate expectation created among the individuals by way of promise or undertaking such decisions, unless there is an

overriding public interest, are liable to be quashed by way of writ of certiorari.

In the present case, the UDA, by P9 and P11, gave a promise/ undertaking that this land could be used as a playground by the residents/occupiers/owners of Jayanthipura Housing Scheme and thereby published its intention. The petitioners and the school children of Battaramulla have been using this land as their playground for several years. This is the position of the petitioners. These facts have even been admitted by the UDA in the letter P9. I have earlier referred to the undertakings given in P9 and P11. Before the 1st to 3rd respondents departed from their undertaking, were the petitioners given a fair hearing as to why they depart from their undertaking? The answer is no. Thus, the 1st to 3rd respondents have not followed the principles laid down in Khan's case (supra). I have earlier held that P9 and P11 had generated a legitimate expectation amongst the residents/occupiers/owners of Jayanthipura Housing Scheme to keep/use the land as a playground. When I apply the principles laid down in the above judicial decisions to the facts of this case, the decisions of the UDA to alienate/handing over the physical possession of the land to the department of WLC will have to be quashed.

At the hearing of this application both counsel agreed that the subject matter of this application is one acre (playground) and the adjoining block of land amounting to 20 perches. Thus, the judgment of this case applies to both blocks of land.

For the reasons set out in my judgment, I issue a writ of certiorari quashing the decisions of 1st to 3rd and the 7th to 13th respondents to alienate and/or grant and/ transfer the said land to the Department of WLC. With regard to writ

of prohibition prayed for by the petitioners, I must mention here in future if there is an overriding public interest to depart from the undertaking given by the UDA it must be possible for the UDA to do so after following the correct legal procedure. I have earlier, referring to Cabinet memoranda of H.E the President and the Minister of Urban Development, Construction and Public Utilities (P16), held that there was no overriding public interest to give this land to the department of WLC. Therefore I am justified in issuing a writ of prohibition in respect of two blocks of land referred to above. A writ of prohibition is, therefore, issued restraining the 1st, 2nd, 3rd and 5th respondents from using and/or utilizing the said land namely one acre land used as playground and the adjoining block of land amounting to 20 perches for any purpose other than as an open space and playground.

The 1st respondents is directed to pay Rs. 50,000/- to the petitioners as costs.

SRIPAVAN J. - I agree.

application allowed.