

**SINHARAJA PLANTATIONS ORGANIC (PVT) LTD.
AND OTHERS****v.****THE LAND REFORM COMMISSION AND OTHERS**

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. AND
WIJETUNGA, J.
S.C. APPLICATION NO. (FR) 422/97
NOVEMBER 16, 1998
DECEMBER 18, 1998

Fundamental rights – Land Reform Law – Section 22 (4) – Alienation of lands vested in the Land Reform Commission – Abdication of statutory duties of the Commission – Article 12 (1) of the Constitution.

The petitioners took steps with a view to the 3rd petitioner-company commencing a project for production of organically grown tea for export to countries constituting the European Economic Community (EEC). The 2nd petitioner who was the Managing Director of both the 1st and 3rd petitioner-companies identified a land which had vested in the Land Reform Commission (LRC) as being most suitable for the purpose. After all the relevant governmental and other authorities approved the project the 5th respondent (Minister in charge of the subject of Plantation Industries) granted approval for the release of the land. Thereafter the petitioners complied with certain other requirements; and on 26. 11. 1996 the 4th respondent (the Director, Sabaragamuwa Province LRC) informed the 2nd petitioner in writing that possession of the land was granted. On the same day physical possession of the estate was handed over to the officers of the 1st petitioner-company (the BOI approved company for the project). However on 27. 12. 1996 the 2nd respondent (Chairman, Land Reform Commission) informed the 3rd petitioner over the telephone that the 7th respondent (Member of Parliament) proposed to alienate the land for another purpose. Therefore he could not proceed with the alienation of the estate.

Held:

A Member of Parliament does not fall into the statutory scheme of the Land Reform Law, in particular having regard to the provisions of section 24 (4) of the law as amended which permit alienation of agricultural land with the approval of the Minister. The Land Reform Commission abdicated its duties at the behest of the 7th respondent Member of Parliament. The

Commission thereby violated the fundamental rights of the petitioners because Article 12 prohibits arbitrary capricious and/or discriminatory action.

Case referred to:

1. *Kuruppuge Don Somapala Gunarathne and 3 others v. Ceylon Petroleum Corporation and 11 others* – 1996 1 SLR 315.

APPLICATION for relief from infringement of Fundamental rights.

Faiz Musthapha, PC with *A. Panditharatne* and *Ms. F. Markar* for petitioners.

L. V. P. Wetthasinghe with *Palitha Mathew* for 1st respondent.

D. M. A. Dissanayake with *Mahinda Nanayakkara* for 3rd and 4th respondents.

Ms. I. Demuni de Silva SC for 5th, 6th, 8th and 9th respondents.

Cur. adv. vult.

January 21, 1999.

DHEERARATNE, J.

At the commencement of this hearing, Mr. Wetthasinghe informed us that the 2nd respondent was no more the Chairman of the Land Reform Commission (LRC) and that he was not appearing for him. The first petitioner is a Board of Investment (BOI) approved private limited liability company, incorporated in terms of the Company Laws of Sri Lanka. The second petitioner is the managing director of both the 1st petitioner-company and the 3rd petitioner-company. The 3rd petitioner-company with a view to commencing a project for production of organically grown tea for the purpose of export to countries constituting the European Economic Committee (EEC) effected a feasibility study in order to identify a land suitable for cultivation of organic tea. The 2nd petitioner having inspected several lands selected the land known as Weddagalawatta *alias* Weddagala Estate in extent A.102 R.O P.02 as the most suitable for the purpose.

Upon further inquiry the 2nd petitioner became aware that the Weddagala Estate was a land vested in the 1st respondent LRC.

On 4. 6. 96 the 2nd petitioner met the 2nd respondent Chairman LRC and presented a detailed project proposal to him. Thereafter on 5. 6. 96 the 2nd petitioner submitted to the 2nd respondent a formal request for the allocation of the Weddagala estate. On 12. 6. 96 the 2nd petitioner also addressed a letter to the 7th respondent MP for the area informing her of the proposed project. The 2nd petitioner addressed a further letter on 19. 6. 96 to the 5th respondent the Minister of Plantation Industries, under whom the subject of Land Reform fell, informing him of the project and requesting him to release the land vested with the LRC.

On 19. 6. 96 and 20. 6. 96 the 2nd petitioner met the 7th respondent. On a copy of the letter dated 19. 6. 96 which was addressed by the 2nd petitioner to the 5th respondent, the 7th respondent made a minute directing the Chairman LRC to "take necessary action". In pursuance of the 2nd petitioner's letter addressed to the 5th respondent Minister, the 8th respondent Assistant Secretary (Land), addressed a letter dated 28. 6. 96 to the 2nd respondent requesting him to submit a report on the availability of the Weddagala estate and the possibility of alienating that land to the 2nd petitioner for the purpose of the organic tea project. The 8th respondent also addressed 2 further letters dated 28. 6. 96 to the Conservator of Forests and the Chairman of the Sri Lanka Tea Board, requesting them to furnish reports on the organic tea project.

Meanwhile the 2nd petitioner acting on behalf of the 3rd petitioner-company submitted a project proposal and a formal application to the BOI on 10. 7. 96, seeking the BOI approval for the organic tea project. The 2nd petitioner also informed the Export Development Board (EDB) regarding his project and the EDB on 26. 6. 96, wrote to the 2nd respondent, signifying its approval of the project and requesting the 2nd respondent to assist in releasing the said land to the 3rd petitioner-company. The BOI by letter dated 11. 7. 96 addressed to the 2nd respondent inquired whether Weddagala estate could be released for the organic tea project. The BOI also wrote to the Sri Lanka Tea Board to inform the BOI whether the Tea Board had any objections to granting approval for the project. The Tea Board replied that it has no objection for the approval being granted by the BOI.

Meanwhile in response to a letter addressed by the BOI dated 11. 7. 96 to the Ministry of Plantation Industries, the Senior Assistant Secretary by letter dated 22. 7. 96 informed the BOI that the LRC had informed the Ministry that Weddagala estate could be released and further requesting the BOI to inform the Ministry whether the project has been approved in order to obtain the 5th respondent Minister's approval to release the land. By letter dated 24. 7. 96 the BOI informed the Ministry that the organic tea project has been approved in principle. The BOI by its letter dated 25. 7. 96 also informed the 2nd petitioner that the project has been approved subject to the conditions stipulated in that letter. One of the conditions stipulated was that the 2nd petitioner should incorporate a company in Sri Lanka for the purpose of pursuing the proposed project. In compliance with this condition, on 13. 6. 96 the 1st petitioner-company was incorporated. On 25. 7. 96 Ministry addressed a letter to the 2nd respondent stating that the project has been approved by the BOI and further intimating that the Ministry has sought reports from the Sri Lanka Tea Board and the Conservator of Forests and that the approval of the Tea Board has been already obtained. That letter further stated that when the report of the Conservator of Forests was received, action would be taken to obtain the approval of the Minister for the release of the land. On 31. 7. 96 the Conservator of Forests informed the Ministry that the Forest Department had no objection for the release of the Weddagala estate. Finally the 6th respondent by letter dated 16. 8. 96 informed the 2nd respondent that "the Hon. Minister has granted his approval to release the requested land for the said project". In view of the Minister's approval granted in terms of the Land Reform Law, the 2nd respondent was also directed to make arrangements for release of the land to the 3rd petitioner in terms of the conditions set out in that letter (P24).

By letter dated 26. 8. 96 the 3rd respondent informed the petitioner that approval was granted for a private survey of the Weddagala estate. He was further instructed that once the survey was carried out he would have to obtain a certificate from the 4th respondent to the effect that the boundaries and other particulars furnished in the survey plan were accurate. On 30. 8. 96 the BOI officers visited the land to ascertain the suitability of that land for the proposed project. In compliance with one of the conditions stipulated by the BOI in its

letter dated 25. 7. 96 regarding obtaining clearance from the Central Environmental Authority (CEA), the 2nd petitioner furnished on 23. 9. 96 the relevant information to the CEA. The officers of the CEA visited Weddagala estate and thereafter by letter dated 16. 10. 96 CEA informed the 2nd petitioner that clearance would be granted on implementation of the terms and conditions specified in that letter.

A private survey of the land was carried out and a report of the surveyor was forwarded to the 1st respondent together with a certificate from the 4th respondent. By letter dated 21. 10. 96 addressed to 2nd petitioner by the BOI, he was informed that he was permitted to locate the project in the Weddagala estate subject to certain conditions. On 24. 10. 96 the petitioner made an application to the Kalawana Pradeshiya Sabha seeking registration and clearance for his project from that local authority. This approval and clearance were granted by letter dated 25. 10. 96 by the chairman of that local authority.

The 2nd petitioner received a letter dated 26. 11. 96 from the 4th respondent informing him that possession of Weddagala estate was thereby granted for the proposed project and on the same day physical possession of the estate was handed over to officers of the 1st petitioner-company.

However on 27. 12. 96, according to the 3rd petitioner, when he telephoned the 2nd respondent he was informed that the 7th respondent proposed to alienate the land in question for another purpose, therefore he could not proceed to alienate the Weddagala estate to the 1st petitioner-company. Certain decisions appear to have been taken by a Ministerial subcommittee in consequence of the *volte-face* of the 7th respondent MP. We are not concerned about that matter as the MP does not fall into the statutory scheme of the Land Reform Law. The letter P24 is referable to subsection 22 (4) of the Land Reform Law brought into force by the Land Reform (Special Provisions) Act No. 39 of 1981 which reads :

'It shall be lawful for the Commission to alienate by way of lease under paragraph (b) or paragraph (bb) of subsection (1), Agricultural

Land to any person in excess of fifty acres for such purposes as may be approved by the Minister."

The complaint of the 1st and 2nd petitioners is that their fundamental right to equality and equal protection of the law as guaranteed to them by Article 12 (1) of the Constitution has been infringed by 1st to 3rd respondents by their failure to alienate the land as approved by the Minister. Ms. Demuni de Silva submitted that the Minister's determination made under subsection 22 (4) stands and that it has not been revoked. Ms. Demuni de Silva and Mr. Wetthasinghe both rightly conceded that when the Minister gives a direction to the LRC in respect of a decision made by him under subsection 22 (4), the LRC has no discretion to refuse granting an alienation. The LRC appears to have abdicated its statutory duties at the behest of the 7th respondent MP.

In these circumstances we hold that the fundamental rights of the 2nd and 3rd petitioners are violated because Article 12 prohibits arbitrary, capricious and/or discriminatory action. (see *Kuruppuge Don Somapala Gunaratne and 3 others v. Ceylon Petroleum Corporation and 11 others*¹¹). In view of this finding we make no decision as to whether the fundamental rights of equality were also violated on the ground of "legitimate expectation".

We direct the 1st respondent LRC (which will include its Chairman and Directors) to alienate the land in question to the 3rd petitioner (or the 1st petitioner as suggested by the BOI) on the conditions stipulated by the 5th respondent Minister in the letter dated 16. 8. 96 (P24), within 6 months of the date of this order. The parties will bear their own costs. We further direct the Registrar of this court to list this case with notice to the petitioners and the LRC, after six months of the date of this judgment, to ascertain whether the order of this court has been complied with.

WADUGODAPITIYA, J. – I agree.

WIJETUNGA, J. – I agree.

Relief granted.

ERRATA

B. Sirisena Cooray v. Tissa Dias Bandaranayake

and Two Others

1999 – 1 SLR

At page 3 – line 24

"Cold Neutrality of an impractical judge" should read as

"Cold neutrality of an impartial judge"

At page 15 – line 17

"what attracts judicial review" should read as

"What attracts judicial review?"