

DEHIWELA-MT. LAVINIA MUNICIPAL COUNCIL AND OTHERS
v
GAUTHAMADASA AND OTHERS

COURT OF APPEAL
AMARATUNGA, J.
BALAPATAHENDI, J.
C.A.L.A. 297/2000 (LG)
D.C. MT.LAVINIA NO. 396/99/SPL
SEPTEMBER 25, 2002

Municipal Councils Ordinance – Sections 42, 45, and 307 – Survey for the purpose of Road widening – Would this affect property rights? – Could the Court grant an Injunction at this stage? – Non consideration of matters relevant to granting of an interim injunction – Fatal.

The petitioner Council decided to widen a particular road and connect it to another road in 1992. In 1999 a letter was received by the plaintiff-respondent from the council that, a Surveyor would visit the locality to conduct a survey for that purpose. The plaintiff-respondent sought and obtained an interim injunction restraining the petitioner Council from entering and surveying the lands.

Held :

- (i) An Injunction is a discretionary remedy granted to prevent the commission of a wrongful act which violates or threatens to violate the legal rights of a party, the party seeking relief must satisfy Court that a *prima facie* case exists in his favour.
- (ii) There is a total absence of any consideration relating to the existence of a *prima facie* case. The only act complained of was the proposed survey. The Court should have considered whether the proposed survey was a wrongful act which violated the property rights of the plaintiff.
- (iii) The exercise of any power given by written law is not wrongful or unlawful, unless that power has been wrongly exercised contrary to the manner specified for its exercise. The plaintiffs have not complained of a wrongful exercise of the power.

The Court could not then have granted a declaration that the survey was unlawful. If the Court has no right to grant the declaration prayed for, the Court would not have the power to grant an interim injunction to prevent the doing of the act in respect of which the declaration is sought.

- (iv) An injunction would not be granted unless there is a threat of immediate or irremediable harm to a party.

APPLICATION for Leave to Appeal from the Order of the District Court of Mt. Lavinia, with leave being granted.

Cases referred to:

1. *Felix Dias Bandaranayake v State Film Corporation* 1981 2 Sri LR 287 at 301
2. *Yakkaduwa Pragnarama Thero v Minister of Education* 71 NLR 506

Lalanath de Silva for defendant-petitioner.

P.A.D. Samarasekera P.C., with *Kirthi Sri Gunawardena* for plaintiff respondent.

November 12, 2003

GAMINI AMARATUNGA, J.

This is an appeal with leave to appeal granted by this Court. 01
The subject matter of the appeal is the order made by the learned District Judge of Mt. Lavinia granting an interim injunction against the Dehiwala-Mt. Lavinia Municipal Council (hereinafter referred to as the council). The facts relevant to this application are as follows. According to the plaint the Council has taken a decision to widen Sri Gunalankara Mawatha situated at Dehiwala and connect it to Aponso Mawatha. This decision taken in 1992 was not implemented due to the protests of the plaintiffs and several others who were residents of the Sri Gunalankara Mawatha. 10

The 1st plaintiff-respondent received a letter dated 5/3/1999, signed by the Municipal Commissioner of the Council informing him that on 12/3/1999 a surveyor would visit the locality to conduct a survey, in terms of the powers vested under the Municipal Council Ordinance, for the purpose of widening the Sri Gunalankara Mawatha and to join it with Aponso Mawatha. The plaint states that upon receiving that letter the 1st plaintiff sent a letter to the Council protesting to the proposed survey and on 12/3/1999 the Surveyor did not survey Sri Gunalankara Mawatha but conducted his survey at the Aponso Mawatha. The plaintiffs were the owners of properties abutting the Gunalankara Mawatha. The plaint averred that a letter similar to the letter dated 5/3/1999 had been sent to residents of Aponso Mawatha informing them that the surveyor would visit Aponso Mawatha on 26/3/1999 for the same purpose. The plaint further averred that from the said letter of 26/3/1999 it was clear that the Council was going to commence the said road widening on 26/3/1999 without giving any intimation to the plaintiffs under section 42 of the Municipal Councils Ordinance, Cap 252. The plaintiffs further averred that for the purpose of the said road widening, it was proposed to annex an extent of 5 perches, and 3 perches each from the properties of the 1st plaintiff and the 2nd and 3rd plaintiffs respectively to the Sri Gunalankara Mawatha and that this act was going to cause severe prejudice to their property rights. The plaintiffs therefore sought the following reliefs from Court. 20 30

1. A declaration that the acquisition and / or the connecting of the lands described in the schedules to the plaint and /or the conducting a survey of the lands described in the schedules to the plaint was unlawful
2. A permanent injunction, an interim injunction and an enjoining order restraining the Council, its servants and agents from entering and / or surveying the lands described in the schedules to the plaint and restraining the Council, its servants and agents from annexing any part of the said land to the Sri Gunalankara Mawatha.

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Having considered the plaint and the documents submitted the learned Judge has issued an enjoining order and notice of interim injunction. After the council appeared and filed its objections to the interim injunction the learned District Judge has granted an interim injunction as prayed for. This appeal is against that order. Leave to appeal has been granted of consent of the parties. For the purposes of this appeal both parties have filed written submissions. Both parties have agreed that this appeal should be decided on the written submissions.

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At the end of his Order granting the interim injunction the learned judge has added a rider to the effect that the said order was not an obstacle to the Council taking steps under the Land Acquisition Act or the Municipal Councils Ordinance to acquire lands necessary for the said road widening project. I believe that the learned Judge has added the said rider for the sake of clarity. But it was totally unnecessary, for the Municipal Council did not need the authority from or the permission of the District Court to exercise the statutory powers vested in it under the provisions of the Municipal Councils Ordinance or to make a request to the government to acquire the lands necessary for the lawful activities of the Council. Much reliance has been placed on this rider in the written submissions filed on behalf of the plaintiff-respondents to argue that the said Order did not prevent the Council from taking steps under the Land Acquisition Act and the Municipal Councils Ordinance to implement the said road widening project. However the said rider does not relieve this Court from its duty to examine the legality of the Order complained of.

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An injunction is a discretionary remedy granted to prevent the commission of a wrongful act which violates or threatens to violate the legal rights of a party. It is well established law that a party claiming injunctive relief must satisfy Court that a *prima facie* case exists in his favour to obtain injunctive relief. The requirement of showing a *prima facie* case for the purpose of obtaining injunctive relief has been explained in the following lucid terms by Soza, J. in *Felix Dias Bandaranayake v State Film Corporation* ⁽¹⁾ at 301. "The applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the plaintiff should be certain to win. It is sufficient if the probabilities are he will win." An examination of the existence of a *prima facie* case in the above sense is the starting point to an order for the granting of injunctive relief.

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A conspicuous feature of the order complained of is the total absence of any consideration relating to the existence of a *prima facie* case. The averments in the plaint merely establish the following two factual positions.

- i. That the Council has decided to widen Sri Gunalankara Mawatha and to connect it with the Aponso Mawatha.
- ii. The Council has commissioned a surveyor to conduct a survey at Sri Gunalankara and Aponso Mawathas.

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Both those factual positions have not been denied by the Council. The plaint did not reveal any other act done by the Council which has the effect of violating or having the effect of threatening the violation of the legal rights of the plaintiff. The only act complained of was the proposed survey. In these circumstances the learned Judge should have considered whether the proposed survey was a wrongful act which violated the property rights of the plaintiffs. In the plaint the plaintiffs have averred that the Council was going to commence the road widening operations without giving them any notice under section 42 of the Municipal Council Ordinance. The said section 42 authorizes the Council to do surveys of any private lands, buildings, or premises necessary for municipal purposes and authorize any officer or servant of the council to make such survey and do the acts specified therein, with notice to the occupiers of such private lands or premises.

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In view of the specific reference to the said section 42 the learned Judge should have turned his attention to the said section. There is no indication in the Order that he has done that. If he has examined the said section, it would have become very clear to him that the proposed survey was to be conducted on the power or authority available to the Council under the law. The letters dated 5/3/1999 and 15/3/1999 signed by the Municipal Commissioner of the Council were obviously notices sent under the said section 42. Accordingly the averment of the plaintiff that no notice had been given under section 42 was incorrect. 110

The exercise of any power given by written law is not wrongful or unlawful, unless that power has been wrongly exercised contrary to the manner specified for its exercise. The plaintiffs have not complained of a wrongful exercise of that power. When a power given under a statute is sought to be exercised according to the manner set out in the statute a person cannot complain that it is a violation of his legal rights. Accordingly the Court could not have granted a declaration that the survey of the plaintiffs lands was unlawful. In a situation, where the Court has no right to grant the declaration prayed for, the Court did not have the power to grant an interim injunction to prevent the doing of the act in respect of which the declaration was sought. 120 130

When a land surveyed under section 42 is needed for a purpose of the Council, such lands may be acquired under section 48 of the Municipal Councils Ordinance by negotiation or where it is not possible, under section 45 by getting the Government to acquire the land under the Land Acquisition Act. Accordingly a survey is the initial step for obtaining lands for the purposes of the Council. The fact that a survey is carried out and the lands to be acquisitioned are earmarked does not necessarily mean that those lands will be automatically acquired. There are other steps in the process. The party whose lands are to be acquired is entitled to negotiate. If the party is not prepared even to negotiate, then the acquisition process set out in the Land Acquisition Act has to be set in motion. That Act has provisions for considering the objections of parties whose lands are proposed to be acquired. If a land is required for a public purpose, a land may be acquired under the Land Acquisition Act but the Act contains provisions to safeguard the rights of affected parties. That is the law of the land. 140

At the time the District Court granted the impugned injunction the only act to be done was the survey, which the Council was lawfully entitled to conduct in terms of the Municipal Councils Ordinance. Such survey was not capable of causing an immediate harm or prejudice to the property rights of the plaintiffs. An injunction would not be granted unless there is a threat of immediate and irremediable harm to a party. *Yakkaduwa Pragnarama Thero v Minister of Education*(2). In this case there was no material before Court to show that such was the situation. All reasons urged by the plaintiffs against the proposed survey namely that the land from the opposite side were not earmarked for acquisition and that the proposed road widening project was motivated by political considerations were matters not relevant to the question that was before Court. 150 160

In the circumstances set out above there was a total failure to consider the matters relevant to the granting of an interim injunction at that stage. In view of this the learned Judge's order issuing an interim injunction cannot be allowed to stand. This finding makes it unnecessary for me to consider the other matters urged in this appeal such as the failure to give notice under section 307 of the Municipal Councils Ordinance and the allegation of suppression of material facts.

I allow the appeal, set aside the order of the learned District Judge granting an interim injunction and dismiss the plaintiff's application for an interim injunction. The plaintiff-respondents together shall pay a sum of Rs.7500/- as costs of this appeal to the defendant Municipal Council. 170

BALAPATABENDI, J. - I agree.

Appeal allowed.