

KAHANDAWELA
v
NATIONAL HOUSING AND DEVELOPMENT
AUTHORITY AND ANOTHER

COURT OF APPEAL
SRIPAVAN, J.
CA 754/99
DECEMBER 7, 2000,
DECEMBER 16, 2003 AND
MARCH 15, 2004

*Writ of mandamus – Refusal to perform a legal duty –Presidential directive –
Status of law ? –Is it enforceable?*

The petitioner the widow of an Air Force Officer who died in action was allotted a flat and a sale agreement was entered into with the 1st respondent. According to the terms of agreement, the petitioner agreed to pay the amount over a period of 20 years in stated monthly instalments.

The petitioner sought to repay on a different basis. On a directive from H.E. The President, the Secretary of Ministry of Housing directed the 2nd respondent to formulate a scheme for the purpose of giving flats on concessionary prices together with a selection criteria. The petitioner did not produce any suitable scheme with a selection criteria. However as the petitioner had defaulted an additional sale agreement, with an undertaking to pay the balance amount was entered into. The petitioner thereafter sought a writ of *mandamus*, to implement the proposals of H.E. The President.

Held:

- (i) The Presidential directive relied on by the petitioner does not have the "status of law". Duties enforceable by *mandamus* are those imposed by law.
- (ii) *Mandamus* would not lie to enforce any further concessions not provided in a legal manner.

APPLICATION for writ of *mandamus*

Cases referred to:

1. *De Alwis v Silva* – 71 NLR 108
2. *State of Assam v Ajit Kumar* – 1969 (AIR) SC 1196

L.C. Seneviratne P.C., with *K. Wickremasinghe* for petitioner
Ms B. Tilakaratne, Deputy Solicitor-General for respondents.

Cur.adv.vult

April 30, 2004

SRIPAVAN, J.

The petitioner is the widow of the late Squadron Leader K.A.J.P. Kahandawela of the Sri Lanka Air Force who died in action consequent to an air crash. The petitioner and her husband were occupying official Married Quarters at the time of the death of the petitioner's husband. The Commander of the Air Force by letter dated 15th March 1966 (P2) addressed to the Minister of Housing, Construction and Public Utilities recommended the petitioner's application to obtain a government flat. Accordingly, the petitioner was allotted a flat by the first respondent in the Manning Town

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Housing Scheme at a purchase price of Rs. 2,500,000.00. The petitioner entered into a sale agreement (P4) with the first respondent on 14th June 1966 after making an initial deposit of Rs. 800,000.00. According to the terms of the agreement, the petitioner agreed to pay the balance amount of Rs. 1,700,000.00 over a period of 20 years in monthly instalments of Rs. 7,085.00.

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The departmental file produced by the learned D.S.G. shows that the second respondent on 5th November 1966 received a letter (P6) from the petitioner seeking permission to re-pay the balance amount of Rs. 1,700,000.00 on the following basis:-

- Rs. 5,000.00 per month for the first five years.
- Rs. 6,000.00 per month for the next five years.
- Rs. 8,000.00 per month for the next five years
- Rs. 9,000.00 per month for the last five years

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However, the second respondent by letter dated 17th February 1997 (P7) informed the petitioner that the instalments relating to the purchase price could not be revised. Thereafter on 29th September 1998, the petitioner forwarded a letter (P11) to Her Excellency the President seeking a reduction in the purchase price of the flat allocated to her. In the aforesaid letter the petitioner referred to a Directive No. PPL/H/02/65/95 dated 21st June 1995 (P10) issued by the Secretary, Ministry of Housing to the second respondent informing that Her Excellency the President has directed that 25% of all houses constructed by the first respondent should be made available to Government Officers and that priority should be given to the families of Armed Service Personnel killed in the North-East War. In the said letter, the Secretary, Ministry of Housing has directed the second respondent to formulate a suitable scheme for the purpose of giving flats on concessionary prices together with a selection criteria.

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It should be noted that the petitioner did not produce any suitable scheme with a selection criteria formulated and implemented by the first respondent authority in relation to the Manning Town Housing Scheme. In the absence of any such scheme adopted in terms of the law, this court is not in a position to decide the legal basis on which a reduction in the purchase price could be given to the petitioner.

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The petitioner subsequently received letter dated 20th May 1999 (P12) from the first respondent authority informing that she has been permitted to pay the balance purchase price over a period of thirty years at the rate of Rs. 4,725.00 per month commencing from 14th June 1996. The petitioner was also requested to be present at the office of the first respondent in order to sign an additional sale agreement to give effect to the necessary changes in the payment of the balance purchase price. It is evident from the departmental file (folio 40) that the Board of Management of the first respondent authority granted approval to the petitioner to pay the monthly instalments already in default together with the balance amount due to the first respondent over a period of thirty years **without interest** from 14th June 1996. Thus, the petitioner on 1st July 1999 signed an additional agreement (P13) undertaking to pay the balance amount in monthly instalments of Rs. 4.725.00.

Learned President's Counsel for the petitioner urged that the document marked P12 be quashed and a mandamus be issued on the first respondent as it has failed to abide by the Directive issued by Her Excellency the President which expressly provides that in the sale of government flats, concessionary rates be given to the families and next of kin of personnel of the Armed Forces killed in combat.

As I referred to in the earlier part of this judgement, in the absence of any scheme approved and adopted in terms of Act No. 17 of 1979 as amended, by the first respondent in selling flats or houses at a concessionary price to the personnel in the Armed Forces and/or their next of kin, this court cannot direct the respondents by mandamus to sell the flats in question at a particular concessionary price. Before mandamus can issue there must be legal duty cast upon the first respondent without discretion to do the very thing ordered. The mere fact that flats have been sold to certain others by the first respondent at a price less than offered to the petitioner is not a ground on which a writ of *mandamus* can be issued. If the petitioner's complaint is that she has been discriminated by the first respondent in the sale of flats, she must have then sought her remedy in the Supreme Court in the manner provided by the Constitution. The Presidential Directive relied on by the learned President's Counsel does not have the status of "Law". Duties

enforceable by mandamus are those imposed by law. In *De Alwis v Silva*⁽¹⁾, it was held that the administrative regulations laid down in the Ceylon Government Manual of Procedure did not have the status of law and that non-compliance with them could not be enforced by mandamus. (Vide *State of Assam v Ajit Kumar* ⁽²⁾). Thus, it is fundamental for the invocation of the remedy of mandamus, there must be a refusal to perform some legal duty. The petitioner having signed two agreements with the first respondent is bound by the terms and conditions of such agreements. In the result, mandamus would not lie to enforce any further concessions not provided in a legal manner. The petitioner's application is accordingly dismissed. There will be no costs.

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Application dismissed.