

ENVIRONMENTAL FOUNDATION LTD.
v.
MINISTER OF PUBLIC ADMINISTRATION
AND SIX OTHERS

COURT OF APPEAL.
DR. RANARAJA, J.
C.A. 137/96.
DECEMBER 17, 1996.

Certiorari – Permit to run a Zoo – Locus standi – Implementation and Enforcement of the law relating to nature, its conservation and the environment – Constitution Articles 28(f) and 29.

Fauna and Flora Protection Ordinance No. 2 of 1957 – Amended by Act, No. 49 of 1993 – Section 55 – Alternative remedy.

The petitioner, a public interest environmental law and advocacy organisation sought a writ of certiorari to quash the authorisation issued by the Director, Department of Wild Life Conservation (2nd respondent) granted to the 3rd respondent to possess and display 30 species of mammals, reptiles and birds and the decision of the 1st respondent Minister to restore the Permit which was earlier revoked. It was contended that a permit cannot be issued to run a private Zoo, in terms of Act, No. 49 of 1993.

It was also contended that, it is an offence to take writ to have in one's possession 26 species of mammals, reptiles and birds listed in the permit except for the purpose of protection, preservation, propagation, scientific study or investigation, unless the Zoo is a National Zoo.

Held:

- (i) As a party genuinely interested in the matter complained of, the petitioner has *locus standi* to make this application.
- (ii) Section 56(2) of the Ordinance No. 2 of 1937 (as amended) gives any person aggrieved by the revocation of a permit the right to appeal to the Minister, and the decision of the Minister is final and conclusive (section 56(4)). In view of the preclusive clause, court will not interfere with an order except in the circumstances set out in section 22 of the Interpretation Ordinance.

The petitioner has not satisfied court that either the 1st or the 2nd respondent had acted contrary to the provisions in section 22.

If the 3rd respondent (the owner of the Zoo) has breached the conditions in the permit the petitioner has the right to make representations to the 2nd respondent – Director of Wild Life Conservation, for necessary action in terms of the clauses in the permit.

Since breach of the conditions in the permit is a matter which court is not in a position to monitor continuously, it will not make orders it cannot effectively enforce.

APPLICATION for a Writ of Certiorari.

Cases referred to:

1. *Premadasa v. Wijewardena* – [1991] – 1 Sri L.R. 333 at 343.
2. *Simon Singho v. Government Agent, WP* – 47 NLR 545.
3. *Wijesiri v. Siriwardena* [1982] – 1 Sri LR 171.
4. *R. v. Paddington, Valuation Officer* 1966 1 QB 380.
5. *R. v. Thames Magistrates Court* (1957) 55 LR 129.
6. *Re Forster* (1863) 4 B & S 187.
7. *Sama Lanka Ltd., v. Weerakoon* [1994] – 1 Sri LR 405.

Lalanath de Silva with *Mihiri Gunaratne* for petitioner.

K. C. Kamalabayson, P.C., A.S.G. with *S. Sri Skandarajah SSC* for respondent.

F. Musthapa, P.C. for 3rd respondent.

Cur. adv. vult.

December 17, 1996.

DR. RANARAJA, J.

The petitioner, Environmental Foundation Ltd.; a public interest, Environmental, Law and Advocacy Organisation has filed this application *inter alia*;

(1) for a writ of certiorari quashing the authorisation (1R1), issued by the 2nd respondent, Director, Department of Wildlife Conservation, to the 3rd respondent, Masahim Mohamed, to possess and display 30 species of mammals, reptiles and birds specified therein.

(2) for a writ of certiorari quashing the decision of the 1st respondent, Minister of Public Administration, conveyed by letter dated 22.9.95 (2R17), to restore Permit No. Va/Sa/San 1.5.62, dated 27.8.93 (1R1), subject to the restriction of species and number of animals, which could be kept by the 3rd respondent under the conditions stipulated in the permit.

The 3rd respondent is the owner of a private Zoo called "Crocodiles and Mini Zoo", Galle Road, Ahungalla, on 1R1, issued by the 2nd respondent. The Zoo is open to the public on payment of an entrance fee of Rs. 15/- and Rs. 100,-. from local and foreign visitors

respectively. The permit lists 30 species of mammals, reptiles and birds and the number of each species that could be possessed and exhibited. 1R1 also lists six conditions under which it is issued. The petitioner states that it is an offence to take and to have in one's possession 26 species of mammals, reptiles and birds listed in 1R1, except for the purpose of protection, preservation, propagation or for scientific study or investigation. Only a National Zoo it is submitted may be allowed such an exemption. The petitioner contends that in the circumstances, 1R1 that has been issued by the 2nd respondent, is illegal, null and void. The petitioner has also alleged that the 3rd respondent has in his possession a sloth bear not included in the permit and five pythons in excess of the number permitted by 1R1, and the permit should be revoked in terms of condition no. 6.

The petitioner filed an earlier application No. 933/94, before this Court seeking *inter alia*, a writ of certiorari quashing 1R1. While that application was pending, permit 1R1 was revoked by letter dated 27.7.95 (B), sent by the 2nd respondent to the 3rd respondent. The 3rd respondent then appealed to the 1st respondent against order (B), by letter dated 1.8.95, (3R2/1R1). The 1st respondent after calling for and considering the reports from the 2nd respondent, the Secretary and Additional Secretary of his ministry had decided to restore 1R1, on condition that the species and the number of animals kept in the 3rd respondent's possession should be restricted to the species and number specified in the permit. That decision was conveyed to the 3rd respondent by 2R17/3R3. On an application made by the petitioner to withdraw Application No. 933/94, which was allowed, that application was dismissed.

Counsel for the 1st and 2nd respondents have taken a preliminary objection that the petitioner has no *locus standii* to make the present application. He submits that the law as to *locus standi* to apply for Certiorari may be stated as follows; the writ can be applied for by an aggrieved party, who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application". *Premadasa v. Wijewardena*⁽¹⁾. *Locus standi* in relation to mandamus is more stringent. The petitioner must have a personal interest in the subject matter of the application., *Simon Singho v. Government Agent W.P.*⁽²⁾.

Counsel for the petitioner on the other hand submits that the petitioner has as its objectives the protection of nature and the conservation of its riches. – (vide P1, P2, P3). It is genuinely concerned with the implementation and enforcement of the law relating to nature, its conservation and the environment in general and is performing a duty cast on it by Article 28(f) of the Constitution of Sri Lanka, to protect nature and conserve its riches. It is to be noted, however, that Article 29 of the Constitution provides that the provisions of Chapter VI do not confer or impose legal rights or obligations and are not enforceable in any Court or Tribunal.

However, there are decisions both here and abroad which have expanded the principle of *locus standi* to include an applicant, who can show a genuine interest in the matter complained of and that he comes before Court as a public spirited person, concerned to see that the law is obeyed in the interests of all: See: *Wijesiri v. Siriwardena*⁽³⁾. Unless any citizen has standing, therefore, there is no means of keeping public authorities within the law, unless the Attorney-General will act – which frequently he will not. That private persons should be able to obtain some remedy was therefore “a matter of high constitutional principle”. – Lord Denning M.R. – *R v. Paddington Valuation Officer*⁽⁴⁾. Nevertheless the Court would not listen to a mere busybody who was interfering in things which did not concern him. But will listen to any one whose interests are affected by what has been done. See: *R v. Paddington (supra)*. In any event, if the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. See: Parker, J. in *R. v Thames Magistrates Court*⁽⁵⁾. Court retains the discretion to refuse to act at the instance of a mere stranger if it considers that no good would be done to the public. See: *Re Forster*⁽⁶⁾. As a party genuinely interested in the matter complained of, the petitioner has the *locus standi* to make this application.

The petitioner's complaint is that section 55 of the Fauna and Flora Protection Ordinance, No. 2 of 1937, permits the 2nd respondent by a writing under his hand to authorise any person to do any act otherwise prohibited or penalized under that Ordinance or any regulation made thereunder, if in the opinion of the 2nd respondent

such act should be authorised for the **protection, preservation or propagation**, or for scientific study or investigation, **or for the collection of specimens for a Zoo**, museum or similar institution, of the fauna and flora of Sri Lanka. By the Fauna and Flora Protection (Amendment) Act, No. 49 of 1993, certified on 20.10.93, the words "for a Zoo" have been replaced by the words "For a national Zoo". The 3rd respondent's Zoo is a private Zoo. Therefore, it is contended the permit 1R1 issued by the 2nd respondent is illegal, null and void. It is submitted, the restoration of permit 1R1, in the purported exercise of the powers under section 56 of the Ordinance by the 1st respondent, is also made without jurisdiction and therefore null and void.

The 1st respondent has affirmed that permit 1R1, was issued prior to the certification of the Fauna and Flora Protection (Amendment) Act. This statement of the 1st respondent has not been challenged by the petitioner by way of affidavit. Upon the revocation of 1R1, by the 2nd respondent the 3rd respondent has appealed to the 1st respondent, who as admitted by the petitioner in paragraph 6 of the petition, is the appellate authority for the purpose of permits and licences under section 56 of the Ordinance. In paragraph 8 of the petition filed in application 933/94, (A) the petitioner has admitted 1R1 was a "**permit**" issued by the 2nd respondent to the 3rd respondent to possess and display 30 species of mammals, reptiles and birds specified in the said **permit** (vide clause 6 of 1R1).

Section 56(2) gives any person aggrieved by the revocation of a **permit** or licence the right to appeal against such revocation to the Minister, and a decision of the Minister on any appeal under section 56(2) shall be **final and conclusive** in terms of **section 56(4)**. In view of the preclusive clause, this Court will not and cannot interfere with such an order except in the circumstances set out in section 22 of the Interpretation Ordinance. That is, where, (a) the order made is *ex facie* not within the power conferred on the person making such decision, (b) the person making such decision has not followed a mandatory rule of law or (c) failed to observe rules of natural justice in the process of making such decision. See: *SamaLanka Ltd. v. Weerakoon*⁽⁷⁾. The petitioner has not satisfied this Court that either the

1st or 2nd respondent has acted contrary to (a) to (c) above. Reliefs, c and d, claimed by the petitioner stem from reliefs a and b. If the 3rd respondent has breached the conditions in 1R1, by either possessing mammals, reptiles and birds in excess of the number permitted by 1R1, or keeping the sloth bear without authorisation of the 2nd respondent, the petitioner will in any event have the right, as it has already done, to make representations to the 2nd respondent for necessary action in terms of clause 6 of 1R1. Since breach of the conditions in 1R1 is a matter which Court is not in a position to monitor continuously, primarily because of the natural increase by breeding – (vide 3R4), it will not make orders it cannot effectively enforce. Reliefs e, f and g are matters preliminary to the hearing of the application. Since the petitioner has failed to establish sufficient grounds for reliefs a and b. The application is dismissed without costs.
