

JANAK HOUSING (PVT) LTD AND ANOTHER
v
URBAN DEVELOPMENT AUTHORITY

COURT OF APPEAL
SRISKANDARAJAH, J.
CA 1131, 2005 (writ)
JULY, 9. 2007

Writ of Mandamus – Compelling Urban Development Authority (UDA) to enter into a lease agreement – Legal right – performance of a legal duty – Essence of Mandamus?

Held:

- (1) The petitioner seeking a *writ of mandamus* must show that there resides in him a legal right to the performance of a legal duty by the party against whom the *mandamus* is sought.
- (2) The general rule of *mandamus* is that its function is to compel a public authority to do its duty. The essence of *mandamus* is that it is a command issued by the Superior Court for the performance of public duty. Where officials have a public duty to perform and have refused to perform, *mandamus* will be to secure the performance of the public duty, in the performance of which the appellant has sufficient legal interest.

Held further:

- (3) The petitioners have failed to show that the respondent has a legal duty to enter into a lease agreement and it is not sufficient, to show that the respondent has the power to enter into a lease agreement with the petitioner. The petitioners have also not shown that they have a legal right to enter into a lease agreement with the respondent.

APPLICATION for a writ of Mandamus.

Cases referred to :

- (1) *Ratnayake and Others v C.D. Peiris and Others* 1982 2 Sri LR 451 at 456.
- (2) *Credit Information Bureau of Sri Lanka v Jafferjees' and Jafferjees (Pvt.) Ltd.* 2005 1 Sri LR 89 at 93.
- (3) *R v Bams Staples Justices Exp. Carder* 1938 1KB 385.
- (4) *Napier ex parte* 1852 18 QB 692 at 695.
- (5) *R v Lewisham Union Guardians* 1897 1 QB 498.
- (6) *P.K. Benarji v H.J. Simonds.*

*Faiz Muthapha PC with Faizer Markar and Tushani Machado for petitioner.
Nihal Jayawardane with Malith Kumara for respondent.*

September 12, 2007

SRISKANDARAJAH, J.

The 1st petitioner is a private limited liability company engaged in the business of a property developer. The 2nd petitioner is the Chairman and the Managing Director of the 1st petitioner Company. The 1st petitioner in or about 21st of January 2003 submitted a project proposal to the Respondent to construct 710 houses at Hi-Ton City New Town (Weralupe), Ratnapura and sought allocation of land for the said project on a 50 years lease. In this regard the respondents called for additional particulars by its letter of 19.3.2003. The petitioners contended that after furnishing the particulars the respondent informed them that the approval from the state land alienation committee was obtained for the allocation of the UDA land at new Town Ratnapura for the said purpose and it was awaiting the valuation of the chief valuer's report. The petitioners were also called upon by the respondent by its letter of 2.3.2004 to obtain environmental clearance, subdivision approval and a building permit. The Respondent by its letter dated 12th November 2003 informed the Board of Investment with a copy to the 2nd petitioner that on the receipt of the

Environmental Impact Assessment Report from the developer, action will be taken to expedite the Chief Valuer's valuation and offer the land to the Company for payment and enter in to a lease agreement for development. The respondent contended that the respondent authority was made to understand that the petitioners are engaged in unauthorised activities at the proposed site and the 2nd petitioner was requested by the respondent to terminate such activities by its letter of 30th April 2004.

The petitioners contended that the 1st petitioner has obtained all the necessary approvals in terms of the letter of the respondent dated 12th November 2003 including the Environmental Impact Assessment Report in these circumstances the petitioners contended that the respondent under Section 8(1) of the Urban Development Authority Act has a duty to enter into a lease agreement with the 1st petitioner on terms and conditions contained in the letter dated 12.11.2003 and the petitioner sought in this application a *writ of mandamus* to this effect.

In this application the Respondent's objection was not accepted by court as it was not filed within the time granted by court.

Section 8 of the Urban Development Authority Act deals with the powers and functions of the Authority and it does not cast any duty in respect of those matters on the Authority. The petitioner to seek a *writ of mandamus* must show that there resides in him a legal right to the performance of a legal duty by the party against whom the *mandamus* is sought. Therefore that a *mandamus* may be issued to compel something to be done under a statute and it must be shown that the statute imposes a legal duty. In *Ratnayake and Others v C.D. Perera and Others*⁽¹⁾ at 456 Sharvananda, J. with Victor Perera, J. and Colin-Thome, J. agreeing held;

"The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the Superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest."

In *Credit Information Bureau of Sri Lanka v Messrs Jafferjee & Jafferjee (Pvt) Ltd*,⁽²⁾ at 93 the Supreme Court held:

"There is rich and profuse case law on mandamus on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:

- (a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the *mandamus* is sought (*R. v Barnstaple Justices exp. Carder*⁽³⁾). The foundation of *mandamus* is the existence of a legal right (*Napier ex parte*⁽⁴⁾).
- (b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.
- (c) The legal right to compel must reside in the applicant himself (*R. v Lewisham Union*⁽⁵⁾).
- (d) The application must be made in good faith and not for an indirect purpose.
- (e) The application must be preceded by a distinct demand for the performance of the duty.
- (f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.
- (g) The Court will as a general rule and in the exercise of its discretion refuse writ of *mandamus* when there is another special remedy available which is not less convenient, beneficial and effective.
- (h) The conduct of the applicant may disentitle him to the remedy, (i) It would not be issued if the writ would be futile in its result.
- (j) Writ will not be issued where the respondent has no power to perform the act sought to be mandated.

The above principles governing the issue of a *writ of mandamus* were also discussed at length in *P.K. Benarji v H.J. Simonds*⁽⁶⁾. Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but

according to a sound and reasonable interpretation. **The court will not grant a mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.**" (Emphases added).

In the instant case the petitioner has failed to show that the respondent has a legal duty to enter into a lease agreement with the petitioners and it is not sufficient to show that the respondent has the power to enter into a lease agreement with the petitioners. On the other hand the petitioners have also not shown that they have a legal right to enter into a lease agreement with the respondent. For these reasons the petitioners application for a *writ of mandamus* is dismissed without costs.

Application dismissed.