

**S. Mathanakumar V. Divisional Secretariat Vavuniya North**

RTIC Appeal Documentary)/ [1933]/[2020]- Order adopted as part of the formal meeting of the Commission on [07/07/2020]

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

**Chairman:** Mr. Mahinda Gammampila

**Commission Member:** Mr. S. G. Punchchihewa

**Commission Member:** Dr. Selvy Thiruchandran

**Commission Member:** Ms.Kishali Pinto-Jayawardena

**Appellant:** S. Mathnakumar

**Notice issued to:** Designated Officer, Divisional Secretariat Vavuniya North

<b>RTI Request filed on</b>	10/06/2019
<b>IO responded on</b>	26/06/2019 (Decision to provide information )
<b>First Appeal to DO filed on</b>	05/07/2019
<b>DO responded on</b>	19/07/2019 (Response)
<b>Appeal to RTI filed on</b>	20/09/2019

**Brief Factual Background:**

The following information was requested by the Appellant on 10/06/2019 from Divisional Secretariat Vavuniya North,

*Boundary stones have been constructed in the state forests located in front of and behind the Vavuniya/Arasa Tamil Kalavan School in the Karappukkuththi village which has been included into the 2019 Model Village scheme by the Nedunkeni Divisional Secretariat under the direction of Sajith Premadasa.*

- 1. More than 08 acres of the state forests have been destroyed. Was a legal approval obtained regarding this?*
- 2. More than ten boundary stones constructed in the destroyed forest area (08 acres) have been removed. Was a legal approval obtained to remove the boundary stones?*
- 3. Housing construction works have been happening in the destroyed forest lands. Are land permits given to the said lands to construct houses?*
- 4. I was informed that Department of Forest Conservation has provided approval to clean the state forests. The certified copy of the said approval letter.*

The I/O acknowledged the request on 10/06/2019 and thereafter by letter dated 20/06/2019 communicated to the Appellant that the PA has decided to provide the information requested by the Appellant but failed to provide the same within the time limit stipulated in the Act. The Appellant appealed to the Designated Officer (D/O) on 05.07.2019 to which Appellant received the following response.

We kindly inform that the requested information has been delayed due to the lack of land officers. We inform that the lands in which the Karappukkaththi model village has been

established are not State lands. The land permits were given to the said lands in 2006 under 20A. The Department of Forest Conservation constructed boundary stones without our permission. Therefore, a decision was taken at the District Development Committee to remove the boundary stones constructed in the public lands.

Dissatisfied with the response the appellant thereafter preferred an appeal to the Commission on 20.09.2019.

**Matters Arising During the Course of the Hearing:**

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures of the RTI Commission's Appeal (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. **As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.**

The PA for its submission dated 22/06/2020 informed the Commission that the land in issue belongs to state and by the special approval given by (2060/20 A) Provincial Land Commissioner permits were given to the public. The PA informed that the same information was provided to the Appellant. The Appellant communicated to the Commission that he is not satisfied with the information provided because he has not been provided with the letter of approval.

**Order:**

The Commission observes that PA has provided information as to whether the said lands are permitted for housing scheme construction but has failed to attach the approval/ permit as mentioned. It is evident that PA has failed to claim the proper exemption under the sec 05 of the Right to Information Act No. 12 of 2016 justifying the denial of the approval/ permit letters. Accordingly the PA is directed to release the information requested by the Appellant or, if the Public Authority is unable to provide the information due to it coming within an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.

The Appeal is adjourned.

Next date of hearing: 02.09.2020

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RTIC Appeal Documentary)/ [1933]/[2020] - Order adopted as part of the formal meeting of the Commission on 02.09.2020

**Chairman:** Mr. Mahinda Gammampila  
**Commission Member:** Mr. S. G. Punchchihewa  
**Commission Member:** Dr. Selvy Thiruchandran  
**Commission Member:** Ms.Kishali Pinto-Jayawardena

**Appellant:** S. Mathanakumar  
**Notice issued to:** Designated Officer, Divisional Secretariat Vavuniya North

**Matters Arising During the Course of the Hearing:**

There has been no response from the Public Authority to the order issued by the Commission directing the PA to release the information requested by the Appellant or, in the event the Public Authority is unable to provide the information due to it falling within an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.

**Order:**

It is noted that the DO has failed to comply with Order dated 07.07.2020 wherein it was directed that the approval/permit supporting the information be provided by the PA. The attention of the DO is accordingly drawn to Section 39 (1) (e) of the Act which states that,

Section 39 (1) (e)

*Every person who....fails or refuses to comply with or give effect to a decision of the Commission... commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.*

Accordingly non-compliance with an order of the Commission in an offence under and in terms of the Act can result in a prosecution in terms of Section 39 (4) of the Act. Section 39 (4) states as follows;

Section 39 (4)

*A prosecution under this Act shall be instituted by the Commission.*

Accordingly the DO is directed to comply with Order dated 07.07.2020 within two weeks of the receipt of this Order.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

**The Appeal is adjourned**

**Next Date of Hearing: 13.10.2020**

RTIC Appeal Documentary)/ [1933]/[2020] - Order adopted as part of the formal meeting of the Commission on 13.10.2020

**Chairman:** Mr. Mahinda Gammampila  
**Commission Member:** Mr. S. G. Punchchihewa  
**Commission Member:** Ms. Rohini Walgama  
**Commission Member:** Ms.Kishali Pinto-Jayawardena

**Appellant:** S. Mathanakumar  
**Notice issued to:** Designated Officer, Divisional Secretariat Vavuniya North

**Matters Arising During the Course of the Hearing:**

The Appellant has written to the Commission on 30.09.2020 drawing the attention of the Commission to a writing received by the Appellant from the PA dated 17.07.2020, whereby the Information Officer of the PA has stated that,

*The special permission letter issued by the Provincial Land Commissioner to grant land under 2006/20A has been misplaced due to the war. As such, I am unable to provide the copy of said permit.*

*A certified copy of the list of beneficiaries who have been granted land under 2006/20A has been annexed hereto.*

Writing to the Commission referencing this letter, the Appellant has stated that this position of the PA cannot be accepted as it has communicated a contradictory position before, i.e. by letter dated 19.07.2019, and also that a completely different statement from the Forest Conservation Department dated 30.07.2019 has been received previously.

**Order:**

The Commission notes that the PA has failed to comply with its Order dated 07.07.2020,

*“The Commission observes that PA has provided information as to whether the said lands are permitted for housing scheme construction but has failed to attach the approval/ permit as mentioned... Accordingly the PA is directed to release the information requested by the Appellant or, if the Public Authority is unable to provide the information due to it coming within an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.”*

The attention of the PA is also drawn to the fact that a subsequent warning has also been issued on 02.09.2020 for non-compliance with the Order dated 07.07.2020.

The position of the PA communicated to the Appellant thereafter on 17.07.2020 that the permit has been destructed during the war period cannot be accepted, as the Model Village referenced by the Appellant in the original information request is in relation to a scheme by the Nedunkeni Divisional Secretariat from the year 2019.

The PA is directed to adhere with the above cited Order made on 07.07.2020, and release the information requested by the Appellant.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

*The Appeal is adjourned*

**Final Date of Hearing: 12.01.2021**

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