

P. U. Rangabandara v. The Mahaweli Authority of Sri Lanka

RTIC Appeal (In-Person)/55/2017 (*Heard as part of the meeting of the Commission on 14.09.2017*)

Acting Chairperson: Ms. Kishali Pinto Jayawardena

Commission Members: Mr. S. G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: P. U. Rangabandara

Notice Issued to: K. G. Perera, Deputy Director General, Mahaweli Authority of Sri Lanka (Designated Officer)

Appearance/ Represented by: P. U. Rangabandara

G.C. Rajapakse (accompanying Appellant)

Dilumi de Alwis, Attorney-at-Law representing the Appellant

K.G. Perera, Deputy Director General MASL

RTI Request filed on: 15.03.2017

IO responded on :16.03.2017 (Acknowledgment), 04.04.2017 (Requesting extension of time), 03.05.2017 (Refusing access to information)

First Appeal to DO filed on: 15.05.2017

DO responded on: 25.05.2017 (sent by DO to IO with copy to Appellant)

Appeal to RTI Commission filed on: 24.07.2017

The Appellant Mr. P. U. Rangabandara was present before the Commission along with Mr G. C. Rajapakse. Ms Dilumi de Alwis an Attorney-at-Law represented the Appellant. The Designated Officer (DO) Mr. K.G. Perera, Deputy Director General of the Public Authority (PA) was present.

Brief Background Facts

The Appeal concerned an information request in respect of the land described as follows;

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla village within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of

Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;
North by – Lots 02 and 03 No. PP Maha 4011
East by – Atabage Oya Reservation and part of land in acquired PP Maha 2225
South by- Atabage Oya and Oya Reservation
West by- Atabage Oya and Oya Reservation and Main Road Reservation and Main Road

The Appellant had requested the following information, by request dated 15.03.2017, pertaining to this land which was deemed by the PA to be vested/ allegedly vested with them.

1. Is the land more fully described below vested with the MASL under and in terms of any specific provisions of written law?
2. Is such a formal and specific order, if any, still in operation?
3. Please provide a copy of any such operating vesting order, certified as true by you.
4. If no has the MASL acquired ownership of the Land more fully described below under and in terms of any specific provisions of written law?
5. If yes, under which provision of written law did such acquisition take place?
6. A certified copy of the Gazette Notification, if any, in terms of which such acquisition was made.

The Appellant stated that they were carrying out a mini hydro-power project on the said land and that the PA had served quit notice on them on the basis that the land belonged to the PA. The ongoing court case seeks to establish among other things in whom the above mentioned land is vested; whether it is with the PA or another agency of the state.

The Information Officer had refused the information on 03.05.2017 stating that the land area on which information is sought is directly related to a court case ongoing in the Gampola Magistrates Court and specifically claimed the exceptions under Sections 5 (1) (f) and 5 (1) (j) of the Right to Information Act No 12 of 2016 (The Act). Section 5 (1)(f) includes information which consists ‘of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority’ and Section 5(1)(j) includes information which would result ‘in contempt of court’ or be ‘prejudicial to the maintenance of the authority and impartiality of the judiciary;’

The DO had stated by letter addressed to the IO (and copied to the Appellant) on 25.05.2017, that he had determined that the information requested could be provided to the Appellant and directed the IO to furnish the information accordingly but despite such direction, the relevant officers had refused to comply. The DO also furnished a copy of a Gazette Notification No 192/2 dated 10th May 1982 published in terms of Section 7 of the Land Acquisition Act No 9 of 1950 relating to three lots of the land (namely lot No. 37, 38 and 39 of PP No. 2203) and in which two lots (namely lot No. 7 ½ and lot No. 7 2/2 in PP No. MAHA 2225) of the land are not contained, to the Appellant. Upon questioning the DO, the DO stated that he has specifically questioned the Director (Lands) as to the release of the information and that the Director (Lands) had stated that the Gazette Notification No. 192/2 dated 10th May 1982 can be handed over in response to the information request of the Appellant. Upon further inquiry at the hearing, the DO questioned

Director (Lands) of the PA as to whether he was aware of any vesting orders issued under the Land Acquisition Act No 9 of 1950 (as amended) in respect of the land in question which question was answered in the negative. The DO himself was not aware of any such vesting order.

Order

The instant matter has been considered in detail. In this case the original information has been refused by the Information Officer (Director HQ Operations/ IO) based on Sections 5 (1)(f) and 5 (1) (j) of the Right to Information Act No 12 of 2016 (The Act) relating to respectively privileged information and contending that release of the information would be 'prejudicial to the maintenance of the authority and impartiality of the judiciary'. However on perusal of the documents and on further questioning the Designated Officer (DO) who was present at the hearing, it is apparent that the invocation of these two grounds rests purely on the claim that the information sought relates to a court case that is ongoing in the Gampola Magistrates Court instituted by the Mahaweli Authority of Sri Lanka (the Public Authority- PA).

The mere institution of a case in court is not specified as a reason for refusing the disclosure of information under and in terms of the Act. Section 5 (1) (f) relating to professional privilege consists of information which is not permitted to be disclosed under any written law. This ground of objection manifestly does not apply to vesting orders or gazette notifications, which are public documents. It is commendable that the DO accepted that the refusal by the IO was wrong and directed the IO to provide the information.

The attention of the PA is drawn to Section 39 (2) of the Act which states that 'any officer whose assistance was sought for by an information officer under Section 23(3) and who fails without reasonable cause to provide such assistance, shall commit an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding ten thousand rupees' and to Section 39 (3) which states that 'a fine imposed for the commission of an offence referred to in sub - section (1) or (2) of this Section, shall be in addition to and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so.' It is further noted that in terms of Section 39 (1) (a) every person who 'deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information' or under 39 (1) (e) '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.'

Upon further perusing this letter sent on 12.09.2017 by the IO to the DO of the said PA, it becomes apparent that the contents of the said letter bear out the request of the said IO to release the said information on direction of the DO but that there has been no response forthcoming from the Director (Lands) of the said PA. The PA is hereby directed to release the information requested which is a copy of any such operating vesting order pertaining to the aforementioned land, certified as true by the PA. Further the contents of letter dated 12.09.2017 of file No. DL/06/02/146 written by Director (Lands) to (Director HQ operations) clearly indicates that no vesting order has been issued in respect of the said land.

Consequently the PA is directed to furnish all relevant gazette notifications in respect of the lands in question which are described above (and which is reproduced again below) before the Commission.

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla village within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;

North by- Lots 02 and 03 No. PP Maha 4011
East by- Atabage Oya Reservation and part of land in acquired PP Maha 2225
South by- Atabage Oya and Oya Reservation
West by- Atabage Oya and Oya Reservation and Main Road Reservation and Main Road

The DO is also directed to clarify more fully the existence of a vesting order issued in respect of the said land.

The Appeal is hereby adjourned to be heard on 23rd October 2017 at 3.00 p.m.

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RTIC Appeal(In-Person)//55/2017 (*Heard as part of the meeting of the Commission on 23.10.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto Jayawardena

Mr. S. G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: P. U. Rangabandara

Notice Issued to: K. G. Perera, Deputy Director General, Mahaweli Authority of Sri Lanka (Designated Officer)

Appearance/ Represented by: Mr. G.C. Rajapakse (with the Appellant)

Ms. Dilumi de Alwis, Attorney-at-Law representing the Appellant

The Designated Officer (DO) Mr. K.G. Perera, Deputy Director General of the Public Authority (PA) was absent.

Order

Due to the fact that the Designated Officer (DO), of the Public Authority, Mr. K.G. Perera, was absent (despite being notified to be present) the matter is re-fixed for hearing on 27.11.2017 at 2.00 p.m. A letter is to be issued to the DO drawing his attention to the fact that the failure to be

present before the Commission is a violation of Section 39(1) (c) of the Act. The DO is required to attend the hearing before the Commission with all relevant gazette notifications in respect of the lands in question which are described below.

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;

North by- Lots 02 and 03 No. PP Maha 4011

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South by- Atabage Oya and Oya Reservation

West by- Atabage Oya and Oya Reservation and Main Road Reservation and Main Road

The DO is also directed to clarify more fully the existence of a vesting order if applicable to the said land in question.

The Director-General of the PA and the Director (Lands) of the PA are also to be issued with copies of the order of 14.09.2017.

The Appeal is hereby adjourned for the 27th November 2017 at 2.00 p.m.

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RTIC Appeal (In-Person)//55/2017 (*Heard as part of the meeting of the Commission on 27.11.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto Jayawardena

Mr. S. G. Punchihewa

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: P. U. Rangabandara

Notice Issued to: K. G. Perera, Deputy Director General, Mahaweli Authority of Sri Lanka (MASL) (Designated Officer-DO)

Appearance/ Represented by: P. U. Rangabandara

G.C. Rajapakse (accompanying Appellant)

K.G. Perera, Deputy Director General/ DO, MASL

D.K.V. Wijayaweera, Director (Head-Quarter Operations), MASL

A. M. Chandrika, Legal Officer, MASL

Asha Rajakeeya, Deputy Director (Legal), MASL

The Appellant was present. The DO represented the PA along with several other officers of the PA including the legal officers.

Matters Arising During the Hearing

The PA was directed on the previous occasion to be present with all relevant gazette notifications and to clarify more fully the existence of a vesting order if applicable in respect of the lands which are described below.

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;

North by- Lots 02 and 03 No. PP Maha 4011

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West by- Atabage Oya and Oya Reservation and Main Road Reservation and Main Road

On the specific question as to whether a vesting order has been issued in relation to the aforementioned land under the Land Acquisition Act No 9 of 1950 (as amended), the legal officer of the PA responded stating that a writ application concerning the land in question had been filed by the Appellant in the Court of Appeal. Accordingly, the exemption under Section 5 (1) (f) of the Act was pleaded. Section 5 (1) (f) reads,

'the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority,'

It was further submitted that the PA is consulting with the Attorney-General's Department on the question as to whether the requested information could be released.

The DO stated on record that in the present instance and as far as he was aware, a vesting order had not been issued. The DO further stated that subsequent to the initial hearing before the Commission in the instant appeal, the Director (Lands) of the PA had been questioned by him as to whether a vesting order had been issued to which he had responded, in writing, that no such vesting order had been issued. The said letter was produced for the inspection of the Commission.

However the Appellant questioned this assertion on the basis that since the land in question had in fact been acquired, the manner in which the acquisition had taken place and under what legal provision if a vesting order had not been issued remained in doubt.

The legal officer of the PA, clarified that the original file in relation to this particular block of land allocated in the Victoria zone was being kept in the field office of the Authority in that particular zone. It was affirmed that the file will be called for by the PA to ascertain the exact status of the information requested.

Order

A Public Authority may not claim the benefit of Section 5 (1) (f) of the RTI Act simply on the basis that there is an ongoing court case. Section 5 (1) (f) only applies to information ‘*which is not permitted to be disclosed under any written law*’ and is of strictly limited application.

For the purposes of the instant case, this includes matters exchanged confidentially in terms of Section 129 of the Evidence Ordinance No. 14 of 1895 which states that;

‘No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.’

Section 26 of the Evidence Ordinance states as follows;

‘No attorney-at-law or notary shall at any time, be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such attorney-at-law or notary by or on behalf of his client or to state the contents or conditions of any document which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course of and for the purpose of such employment.’

It is pertinent that Section 26 is subject to several provisos which are however of little relevance in this matter.

On the facts of the instant case, the application of Section 5 (1) (f) of the Act cannot be maintained. Moreover, a vesting order is unquestionably a public document and the exact status of its issuance or non-issuance as the case may be which forms the core of the instant information request must be clarified by the PA and the relevant documents supplied as requested by the Appellant. The mere *ipse dixit* of a state officer will not suffice for that purpose.

The PA is hereby directed to produce the relevant file before the Commission at the next date of hearing in order to ascertain the aforesaid status of the information requested.

The appeal is hereby adjourned.

Next date of hearing: 19.12.2017

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RTIC Appeal (In-Person)//55/2017 (*Heard as part of the meeting of the Commission on 19.12.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto Jayawardena

Mr. S. G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: P. U. Rangabandara

Notice Issued to: K. G. Perera, Deputy Director General, Mahaweli Authority of Sri Lanka (MASL) (Designated Officer-DO)

Appearance/ Represented by: P. U. Rangabandara

G.C. Rajapakse (accompanying Appellant)

Dilumi de Alwis (Counsel for the Appellant)

S.M. Gotabhaya Jayarathne, Director General, MASL

K.G. Perera, Deputy Director General/ DO, MASL

R.L. Rajapakse, Director (Legal), MASL

D.A. Asantha Gunasekera, Director (Land)

Asha Rajakeeya, Deputy Director (Legal), MASL

Matters Arising During the Hearing

The PA was directed on the previous occasion to clarify more fully the existence of and application of a vesting order in respect of the acquisition of the lands in question. The DG of the PA submitted that the information sought was in regard to property belonging to the MASL. He claimed that the information was exempted by Section 5 (1) (f) of the RTI Act No. 12 of 2016.

The DG stated that the Appellant party had earlier been using property belonging to the MASL without any authority. He said that the PA has already lost 14 million Rupees due to this and that he was answerable for any losses. He further stated that the Appellant party had been using the land for four years against the legal right of the PA and that there had been two court cases already on this matter. He said the PA was willing to submit the information to Court.

In response, Counsel for the Appellant stated that her client was not occupying the said land. The Appellant had started a hydro – power generating project which had been considered and approved by both the MASL and the CEA in 2014, but that in August 2015, MASL had claimed ownership of the land without warning. It was due to this action by the PA that the Appellant had requested to see the vesting order in respect of the land in question since the CEA had also given approval for the Appellant's project. Counsel for the Appellant moved that repeatedly refusing to provide such information amounted to an offence and that the Commission should prosecute the erring

officers in terms of its powers under Section 39 (4) of the RTI Act. The Appellant also mentioned that he was being grilled by the FCID regarding the same matter as the PA had made a complaint against him.

It was further submitted by officers attached to the PA that a vesting certificate may also be issued in respect of lands that is sought to be acquired, under and in terms of the Land Acquisition Act No 9 of 1950 (as amended),

The Commission informed the PA that it should respond in accordance with law as the matter had already been heard multiple times with the same exemption being repeated by the PA in the absence of adequate supporting documentation.

Order

The information request in this matter pertains to the basis on which the land in question and more fully described in the preceding Orders of this Commission has been acquired by the PA by virtue of a vesting certificate/ order issued in relation to the particular land.

In consideration of the submission made by the DG of the PA before us that the requested information is exempted by reason of Section 5 (1) (f) of the RTI Act, it is reiterated that this Section does not automatically apply purely for the reason that documents have been submitted by the relevant PA to the Department of the Attorney General in relation to an ongoing court case.

In accordance with earlier orders by this Commission in this appeal, if the exemption is pleaded it must be shown how the information is privileged. The relevant portion of the Section contains the stipulation that the information should be that '*which is not permissible to be disclosed under any written law*'. Thus, each and every document submitted to the Attorney General would not be covered by the cited exemption.

In this instance, a vesting order cannot be privileged as it is a public document. Whether such an order was issued and to what portion of the land that order is applicable should be information available to the public.

It is of record that the Director General of the PA has in fact, accepted that a vesting order issued in respect of a particular land is not a privileged document. The law does not privilege any PA in this regard as to what information can be accepted as being encompassed within the category of information that is '*not permissible to be disclosed under any written law*'. That is confined to the category of documents defined by the law. If it is the case, as confirmed by officers attached to the PA before us at this appeal hearing, there is a vesting certificate/ order issued by the State in relation to the particular land, the PA is directed to release such information to the Appellant.

We note that the DG has assured on record before the Commission that the information in issue will be provided to the Appellant within one week of the conclusion of this appeal hearing. If the said information is not provided or is inadequate, the Appellant may apply to the Commission to take necessary action re failure to comply with the decision of the Commission as per Section 39 (1) (e) of the RTI Act No. 12 of 2016.

The decision of the Designated Officer to provide the information asked for by the Appellant is affirmed. The appeal allowed and the Public Authority, of consent, agrees to provide the

information in issue, namely the vesting order/certificate issued by the State in relation to the land that is the subject matter of the dispute to the Appellant within one week of this appeal hearing.

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